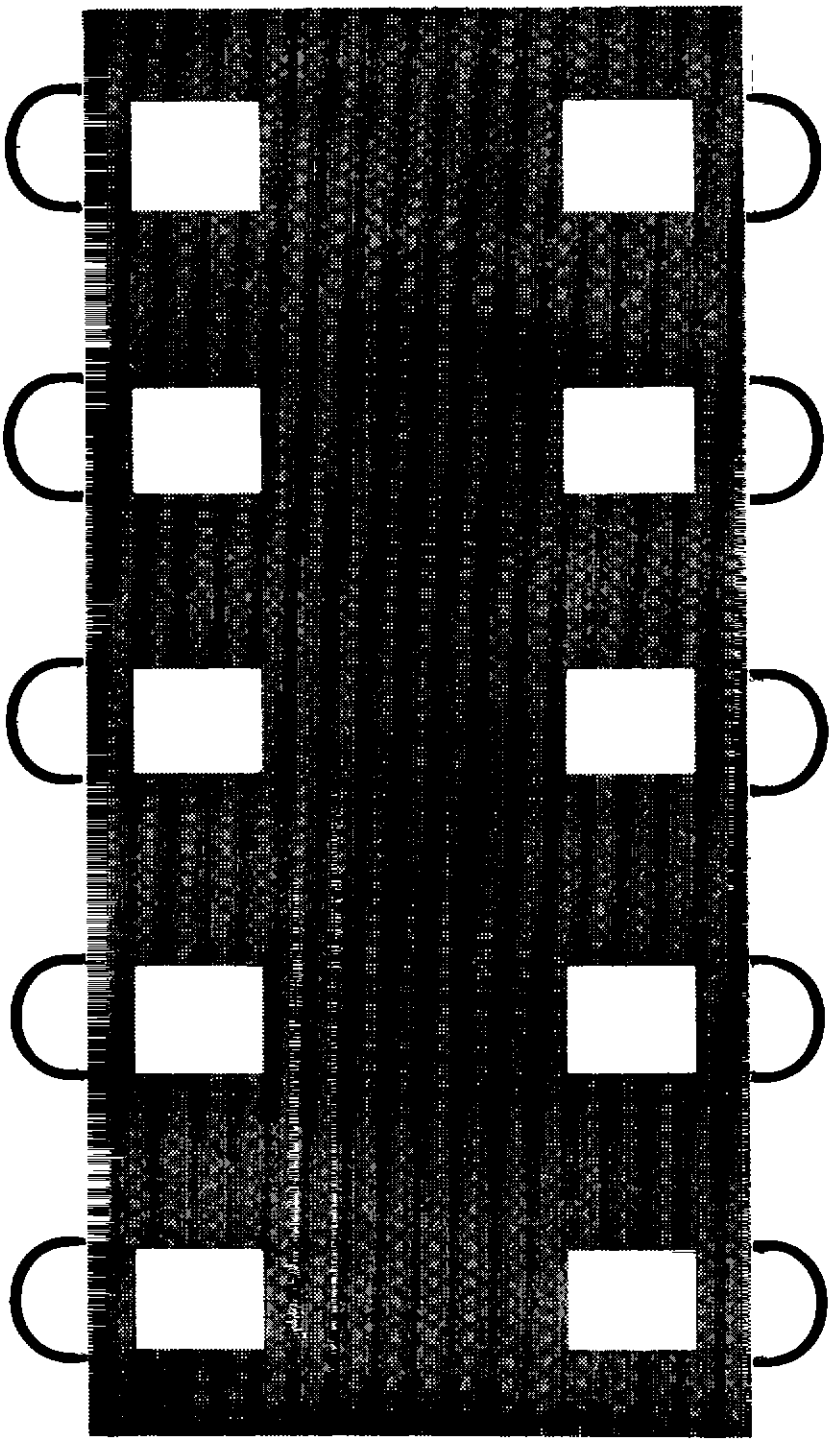
COLLECTIVE BARGAINING



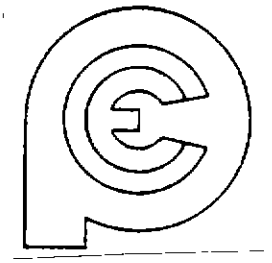
BY FACULTY IN CALIFORNIA POSTSECONDARY EDUCATION

CALIFORNIA POSTSECONDARY EDUCATION COMMISSION

COLLECTIVE BARGAINING BY FACULTY IN CALIFORNIA POSTSECONDARY EDUCATION

Present Application

and Possible Future Implications



CALIFORNIA POSTSECONDARY EDUCATION COMMISSION

1020 Twelfth Street, Sacramento, California 95814

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CONTENTS

TABLES

PREFACE

Collective bargaining involves the mutual obligation of an employer and an exclusive employee representative to meet at a reasonable time and formally negotiate on issues of wages, hours, and other terms and conditions of employment defined to be within the scope of bargaining, under conditions designed to resolve impasse and result in the adoption of a written agreement.

Because such bargaining is a relatively new phenomenon in California postsecondary education, this report has been prepared both to describe its recent development and to assess its possible implications for the future.

The first chapter traces the development during recent decades of academic collective bargaining practices throughout the country and in California. The second chapter describes the current status of collective bargaining in the segments of California postsecondary education, including its growth, present extent, and specific characteristics, in the context of national developments. The third discusses the possible implications of collective bargaining for institutional operations and educational policy. The fourth and final one offers several brief conclusions and observations.

The report is based on a review of relevant literature, an informal survey of academic officers in several key states, and discussions with knowledgeable individuals in California and other states. It makes no effort to predict scientifically from these sources the impact of bargaining on state policy or educational practice. Rather, it attempts to point out possible results suggested by the literature and the experiences of other states, in order to provide a basis for future observation, analysis, and action in this area.

As originally envisioned, the scope of the report encompassed bargaining by all employees at all institutions of postsecondary education in California. In the course of the study, however, practical considerations have resulted in a more narrow focus. Because the literature on collective bargaining in postsecondary education is overwhelmingly concerned with faculty to the virtual exclusion of other employee groups, the report emphasizes faculty bargaining although it includes information, where available, about staff bargaining both in and outside of California. And while it contains information about bargaining in private institutions, it focuses on collective bargaining in public institutions because of their greater relevance for State policy.

CHAPTER ONE

THE LEGAL AND HISTORICAL DEVELOPMENT OF COLLECTIVE BARGAINING

EARLY DEVELOPMENTS IN OTHER STATES

Collective bargaining in postsecondary education has grown out of its application to private business and industry, which first occurred in the Railway Labor Act of 1926. In 1935, the National Labor Relations Act (NLRA) broadened the use of collective bargaining beyond the railroads to other parts of the national economy. While the NLRA has not applied directly to state or federal employees, it has served as a model for legislation adopted by several states, beginning in the early 1960s, under which collective bargaining has been extended to public employees. State legislatures, administrative agencies, and courts in some jurisdictions soon extended bargaining to public school employees. A further extension to community colleges was a natural step since these institutions had often grown out of the secondary school system. Four-year colleges and universities have generally been the last to enter into collective bargaining, and the number of these institutions which have done so is still relatively limited.

In 1963, Wisconsin's Milwaukee Institute of Technology, a two-year vocational college which had developed as part of the public school system, became the first postsecondary institution to enter into collective bargaining with its faculty. In 1966, the faculty of the United States Merchant Marine Academy became the first in a four-year institution to unionize. Despite these two events, however, collective bargaining in postsecondary education remained largely unnoticed until 1969 when the faculties of major institutions in three key states--Michigan, New York, and Massachusetts--voted to organize.

In 1965, under Public Act 379, Michigan established the right of public employees to bargain collectively with their employers. Organization began immediately in Michigan's secondary schools and at a number of community colleges, and in 1969, Central Michigan University became the state's first four-year institution to adopt collective bargaining. Today all but a few of Michigan's public postsecondary institutions have elected bargaining representatives, and the state is one of the most thoroughly unionized in the country.

In New York, activity began in 1967 with the enactment of the Taylor Law which authorized collective bargaining for all public employees in the state. In 1969, the unionization of postsecondary education was significantly advanced by the election of a bargaining representative at the City University of New York. Two years later, the State University of New York followed suit, so that by the early 1970s virtually every public institution in the state was covered. These major victories for unionism spurred a wave of elections throughout the country.

Nineteen sixty-nine also marked the beginning of collective bargaining in Massachusetts, when Southeastern Massachusetts University and Boston State College elected bargaining agents that year. As was the case in Michigan and New York, many other Massachusetts institutions followed their lead and have entered into collective bargaining since then.

EVOLUTION OF FEDERAL LAW REGARDING PRIVATE INSTITUTIONS

Collective bargaining at private or independent institutions is based on judicial interpretation of the National Labor Relations Act. When the NLRA was enacted in 1935, it was commonly accepted that nonprofit organizations (including most educational institutions) fell outside its coverage because they did not affect interstate commerce. However, in 1970, the National Labor Relations Board, which is charged with the responsibility of determining the applicability of the Act to particular situations, asserted jurisdiction over a private college or university for the first time in the Cornell University case [183 NLRB 329 (1970)]. Shortly thereafter, it authorized the formation of the first faculty bargaining unit at the C. W. Post Center of Long Island [189 NLRB 904 (1971)].

Once the NLRB extended its jurisdiction to cover colleges and universities, many institutions sought to prevent faculty from unionizing by arguing that faculty members are among those employees excluded from protection by the NLRA as either supervisors or managers, since the Act excludes those employees with supervisory responsibilities [29 USC 152 (3), 152 (11), and 164 (a)]. In addition, the NLRB and the courts have interpreted the Act to exclude managerial employees who formulate and effectuate the policies of an employer [NLRB vs. Bell Aerospace, 416 U.S. 267, 288, (1974)]. Both of these exclusions are premised on the need of the employer to command the loyalty of supervisors and managers who must necessarily direct an organization's operation. But in the C. W. Post case and a series of subsequent cases, the NLRB rejected

arguments by institutions that faculty members were either supervisors or managers because of their participation in academic and personnel decision-making under the academic system of "shared governance." The Board's reasoning was most clearly stated in the Northeastern University case where it held that faculty members were not managerial employees because (1) they exercise their decision-making authority collectively rather than as individuals; (2) they exercise independent professional judgment for the purpose of furthering their own interests and not those of the institution; and (3) they do not have the final authority to make decisions but merely make recommendations to administrators or governing boards [218 NLRB 247 (1975)].

The question of the managerial status of university faculty was finally faced by the courts in the Yeshiva University case. Yeshiva University is a large multi-campus private university in New York. When in the early 1970s, its faculty began to feel that their salaries were falling behind those of other unionized institutions in the New York area, the faculty elected a bargaining agent and received certification by the NLRB to enter into collective bargaining with the University. The University refused to bargain and challenged certification by the NLRB on the grounds that the Yeshiva faculty were managerial employees and, therefore, excluded from the protection of the National Labor Relations Act. In February 1980, the United States Supreme Court handed down a 5 to 4 decision in the University's favor holding that the Yeshiva faculty were managerial employees and thus excluded from the coverage of the Act [NLRB vs. Yeshiva University, 444 U.S. 672 (1980)]. The Court's decision appears to be based on at least three factors: (1) the high degree of deference accorded to faculty decisions at Yeshiva, (2) its conclusion that the faculty exercised authority which would have been managerial in an industrial setting, and (3) the failure of the NLRB to develop a factual record on which to base its position.

The Yeshiva decision does not set forth a clear standard for determining whether faculty members are to be included within the coverage of the NLRA in particular cases. Thus it will take time for the full implications of this complex and controversial decision to be understood. The Court rejected the legal arguments put forth by the NLRB but failed to specify an alternative test to be applied in similar cases. Rather the decision was based on an analysis of the particular facts in the case and not on any legal principle which would operate uniformally to exclude or include faculty within the coverage of the Act. The use of this sort of factual analysis suggests that if presented with a somewhat different pattern of facts, the Court might rule very differently. Indeed, in a footnote the Court observed "there thus may be institutions of higher learning unlike Yeshiva where the faculty are entirely or predominantly nonmanagerial" (Id. at n. 31).

It is also far from clear whether the Court views the industrial model as applicable to collective bargaining by college and university faculty. On the one hand, the Court itself uses the industrial analogy when it says:

> The controlling consideration in this case is that the faculty of Yeshiva University exercise authority which in any other context unquestionably would be managerial . . . [T]o the extent the industrial analogy applies, the faculty determines within each school the product to be produced, the terms on which it will be offered, and the customers who will be served [444 U.S. 672, 686 (1980)].

On the other hand, however, in response to the NLRB's attempt to use the industrial analogy to bolster its position, the Court states "the analogy of the university to industry need not, and indeed cannot, be complete" [444 U.S. 672, 689 (1980)].

Another puzzling aspect of the ruling is that, at least to some extent, the Court's decision appears to be based on the fact that the Yeshiva faculty was successful in getting frequent administrative concurrence with their decisions. Applying this rationale has the paradoxical result that the more successful the faculty has been at working with the administration, the less likely it will be to gain the right to bargain collectively. This could conceivably discourage faculty from establishing good working relations with an administration for fear of being later denied the right to bargain.

The only certainty after Yeshiva is that cases involving the managerial status of independent or private college and university faculty will have to be handled on a case-by-case basis, at least for the immediate future. The problem is to devise a test or rule which will appropriately draw the line distinguishing those faculty who are managerial and those who are not. A number of possible solutions to this problem have been suggested. The Yeshiva Court itself suggested that perhaps an appropriate bargaining unit could be designed which excludes as managers only the full-time, tenured senior faculty. (Id.) The Court gave some additional guidance when it noted with approval certain decisions of the NLRB outside of the educational context in which employees were held to be managers only when their decisions fell outside of the scope of decisions routinely made by similarly situated professionals. (Id. at 690) Another possibility is the so-called "floating unit" in which faculty members would be excluded from the bargaining unit when they were serving on personnel or budget committees but could once more join the unit when they ceased these duties (Douglas, 1981, p. 22). The American Federation of Teachers, in consultation with representatives of other unions, has developed a set of proposed

guidelines for applying the Yeshiva decision which it submitted to the NLRB in 1981 (Kuechle, 1981, pp. 12-13). Unfortunately, the guidelines which the NLRB issued in April 1981 are very general and do not identify a clear standard to be used for determining the managerial status of faculty.

Today, approximately 40 private colleges and universities have raised claims based on arguments similar to those at issue in Yeshiva (Douglas, 1981, p. 15). The NLRB has ruled in a few of these cases, but none provides much guidance as to the direction it will eventually take in this area. Most of the rulings closely follow the Yeshiva decision and hold that faculty members are managerial employees and not protected by the NLRA. In two cases, the NLRB upheld the right of faculty members to participate in collective bargaining. In one of these cases, faculty members at Montefiore Medical Center were held not to be managers despite their supervision of other personnel and of medical procedures. In the other case, at Bradford College in Massachusetts, the president frequently overrode or ignored faculty recommendations on a broad range of issues. While these cases shed little light on the ultimate impact of Yeshiva, the NLRB is expected to rule on another 24 pending claims within the next few months, and it is hoped that these decisions will provide some answers to the questions left unresolved after the Supreme Court's landmark decision.

CALIFORNIA LAW

Prior to the advent of collective bargaining, faculty members in California Community Colleges and teachers in the public schools had the right to "meet and confer" with their employees under the Winton Act (c. 2041, Stats. 1965). Today, after over a decade and a half of legislative activity, all public employees in California have been accorded the right to bargain collectively with their employers. This victory for collective bargaining was not accomplished through comprehensive legislation, as was the case in most states, but rather through the adoption of four specific-purpose collective bargaining bills.

The first of these bills was the Meyers-Milias-Brown Act of 1968, which granted local government employees collective bargaining rights. After this initial achievement, proponents of public sector collective bargaining made several unsuccessful attempts to pass comprehensive legislation extending collective bargaining to all state employees during the 1973-74 and 1974-75 legislative sessions. These early efforts at comprehensive legislation failed for a variety of reasons, but one of the most significant factors

was the attempt to include employees of educational institutions along with other public employee groups. The solution which evolved was to enact three separate bills which, taken together, extended collective bargaining to all remaining public employees:

- SB 160 (Rodda) of 1975, covered employees of the public schools and Community Colleges and became known as the Educational Employment Relations Act (EERA) [c. 961 Stats. 1975, codified as, Chapter 10.7 Cal. Gov't. Code Section 3540 et seq (West, 1980)].

- SB 839 (Dills) of 1977, the State Employer-Employee Relations Act (SEERA), guaranteed collective bargaining rights for civil service employees of the state government. [c. 1159 Stats. 1977, codified as, Chapter 10.3 Cal. Gov't. Code Section 3512 et seq (West, 1980)].

- And AB 1091 (Berman) of 1978, entitled the Higher Education Employer-Employee Relations Act (HEERA), covered employees at the University of California and the California State University [c. 744 Stats. 1978, codified as, Chapter 12 Cal. Gov't. Code Section 3560 et seq (West, 1980)].

Though these statutes were all passed at different times, their structure reveals considerable effort to provide a parallel statutory scheme for each separate group of public employees. Appendix A provides a comparison of the key provisions of each of these acts. The EERA and HEERA, being of primary importance for the study of collective bargaining in postsecondary education, are discussed in more detail in the remaining sections of this chapter.

The EERA and Community Colleges

Pressure for the enactment of the EERA developed as a result of employee dissatisfaction with the limited protection they received under the Winton Act, which governed labor relations in the public schools and Community Colleges prior to 1976. That Act did not provide employees the right to bargain collectively, but merely required that the employer "meet and confer" with employee groups before making certain decisions. Collective bargaining is preferable to a "meet and confer" statute from the employees' perspective because it provides: (1) a mechanism for the selection of a single organization as the exclusive representative of all employees within a given unit; (2) impasse procedures, including mediation and fact finding, designed to increase the likelihood of reaching agreement; (3) an obligation on the part of the employer to actively bargain (seriously considering employee proposals and making counter-proposals when appropriate) and make a serious good-faith

effort to reach agreement; and (4) a requirement that all agreements be embodied in a contract between the employer and the employee representative which cannot be unilaterally modified by the employer.

In adopting the EERA, it is evident that the Legislature intended to model the new statute after the NLRA and the decisions of the NLRB interpreting that Act. For example, the EERA established the Educational Employment Relations Board (EERB), now called the Public Employment Relations Board (PERB), and endowed it with powers virtually identical to those of the NLRB. Provisions of the EERA with respect to scope, unfair practices, and unit determination are also very similar to those under federal law. One important deviation from the NLRA pattern, however, is the EERA's provision for supervisory employees to form a separate bargaining unit and conduct negotiations with the employer [Gov't. Code Section 3545 (2)]. Although this provision has been sparingly used (Alleyne, 1980, p. 596), it is nevertheless a substantial departure from the provisions of the NLRA which clearly excludes supervisors from the coverage of the Act [29 USC Section 152 (11)]. Another major difference between the two statutes, discussed in detail in the next chapter, is that the EERA has been interpreted to prohibit strikes by public employees [Pasadena Unified School District vs. Pasadena Federation of Teachers, 72 Cal. App. 3d 100, 105-107, 140 Cal. Rptr. 41 (1977)].

The HEERA and the Public Universities

After the passage of the EERA in 1975, efforts were soon underway to enact collective bargaining legislation for other groups of public employees. In March 1977, Assemblyman Howard Berman, with the support of various faculty organizations, introduced AB 1091 to permit employees at the University of California and the California State University and Colleges to participate in collective bargaining. In an attempt to forestall the passage of AB 1091, the governing boards and administrators of both systems moved to include their employees in SB 839, a comprehensive collective bargaining bill for all state employees, which was perceived to be more favorable to employer interests (Lewin, 1979, p. 55). When SB 839 passed without the inclusion of the University and the State University, AB 1091 was left as the sole remaining vehicle for bringing collective bargaining to the systems.

AB 1091 easily passed the Assembly in the early summer of 1977, but a few weeks later it failed passage in the Senate Education Committee by a vote of 7 to 4. The Committee vote reflected the fact that many legislators shared the concerns of the educational institutions that collective bargaining would interfere with traditional

mechanisms of faculty governance. The administration of the State University interpreted the Committee's vote as a victory and continued its opposition to the bill. By contrast, the University of California administration interpreted the vote as only a temporary delay in the inevitable passage of collective bargaining legislation and chose in January 1978 to withdraw its opposition to the bill and work with Assemblyman Berman and the faculty organizations to achieve a compromise.

In addition to the faculty and administration, students also played a key role in the passage of AB 1091. Years earlier, when the enactment of collective bargaining legislation affecting higher education became a real possibility, lobbyists for students at the University and the State University had concluded that it might threaten hard-won student participation in university government. Accordingly, each time a collective bargaining bill was introduced, the student lobbyists offered amendments providing for student involvement. These amendments were generally opposed by the original supporters of the bill, and when these amendments were not included in the final version of the bills, the student lobbyists sided with opponents of collective bargaining, and the legislation did not pass. Realizing that student participation would thus be necessary to pass any collective bargaining bill, the faculty organizations acquiesced in its inclusion in AB 1091, and the support of the student lobby was thereby enlisted.

Having achieved compromises among the University administration, faculty organizations, and student lobbyists, AB 1091 narrowly cleared the Senate Education Committee in late 1978 by a vote of 7 to 6 over the objections of the State University administration. As a result of the compromises which were necessary to achieve its enactment, the HEERA contains several provisions which differ markedly from those of the NLRA, the EERA, and the SEERA. Most notable are its inclusion of student participation in the bargaining process, its statutory language specifically establishing appropriate faculty bargaining units, its differential treatment of the University and the State University, and its inclusion of provisions designed to protect traditional faculty governance mechanisms.

CHAPTER TWO

EXTENT AND NATURE OF ACADEMIC COLLECTIVE BARGAINING

EXTENT OF ACADEMIC BARGAINING

Of the 31 states that now have collective bargaining laws covering professionals in education, 24 extend collective bargaining to postsecondary education. Most states cover education within comprehensive public employee bargaining legislation, but a few, including California, have in recent years begun to differentiate bargaining for educational employees. Table 1 on page 10 displays information about state collective bargaining legislation. It clearly indicates a slowdown in the enactment of such laws. Most statutes were enacted in the early 1970s; a few were adopted in the late '70s; but none has been passed since 1978. Economic constraints, a conservative political trend, and uncertainty about the impact of the Yeshiva decision may all have contributed to this trend.

Table 2 gives nationwide statistics about the growth and present extent of collective bargaining for faculty in postsecondary education from 1966 through 1981. As of the end of 1981, some 167,500 faculty were represented by 422 bargaining agents and had negotiated 382 collective bargaining agreements. Over the 15 years from 1966 to 1981, the growth in these numbers was steady if not spectacular, but it has begun to taper off in the last few years. Indeed, the absolute numbers of recognized bargaining agents have actually declined since 1980 due to the decertification of some agents in the wake of the Yeshiva decision. Table 2 also indicates that approximately two-thirds of the over 400 institutions engaged in collective bargaining are two-year schools and that three-fourths of them are in the public sector.

Caution should be used in interpreting the figures in Table 2. The accuracy of its statistics is hampered by the fact that agents periodically change and are decertified, planned contracts may be delayed or never signed, and institutions are under no obligation to provide accurate or complete information about their involvement in collective bargaining to the sources from which this table was derived. Likewise, the number of covered faculty is uncertain due to the differing composition of each bargaining unit and the conflicting claims of unions and administrations about the size of these units. And Table 2 does not include the nearly 20,000 faculty members of the California State University, since their representation elections had not been completed as of the end of 1981.

TABLE 1 State Public Employee Collective Bargaining Laws Affecting Education, 1980

State	Number of Statutes[1]	Type of Laws			Professional Coverage[2]			Classified Coverage[3]			Supervisor Coverage[4]			Union Security Provisions[5]
		Local[2]	State[3]	Omnibus[4]	K-12	CC[6]	PS	K-12	CC[6]	PS	K-12	CC[6]	PS	
Alabama														
Alaska	2	x		x	x		x			x	x			x
California	3	x	PS		x	x	x	x	x	x				x
Connecticut	3	x	x		x	x	x	x	x	x	x	x	x	x
Delaware	2	x			x		x	x		x				x
Florida	1			x	x	x	x	x	x	x	x	x	x	x
Hawaii	1			x	x	x	x	x	x	x				x
Idaho	1	x			x						x			
Indiana	1	x			x									x
Iowa	1			x	x		x	x		x				x
Kansas	2	x		x	x	x	x	x	x	x				x
Maine	2	x	PS CC		x	x	x	x	x	x	x			x
Maryland	2	x			x			x			x			x
Massachusetts	1			x	x		x	x		x	x		x	x
Michigan	1			x	x		x	x		x	x		x	x
Minnesota	1			x	x	x	x	x	x	x	x	x	x	x
Missouri	1			x				x			x			
Montana	1			x	x	x	x	x	x	x				x
Nebraska	2	x		x	x		x	x		x				
Nevada	1	x			x			x			x			x
New Hampshire	1			x	x		x	x		x	x		x	
New Jersey	1			x	x	x	x	x	x	x				x
New York	1			x	x		x	x		x	x		x	x
North Dakota	1	x			x	-					x			
Oklahoma	1	x			x			x			x			x
Oregon	1			x	x	x	x	x	x	x				x
Pennsylvania	1			x	x		x	x		x	x		x	x
Rhode Island	3	x	x		x		x	x						x
South Dakota	1			x	x		x	x		x	x		x	
Tennessee	1	x			x									
Vermont	3	x	x		x		x	x		x	x		x	x
Washington	4	x	CC		x	x		x	x	x	x	x	x	x
Wisconsin	2	x	x		x	x	x	x	x	x	x	x	x	x
District of Columbia	1	x			x		x				x		x	x
TOTALS		19	7	17	32	12[8]	24	27	12[8]	24	20[9]	5	13	26

[1] Represents the number of separate statutes summarized on the table for each state
[2] Coverage for local level employees only
[3] Coverage for state-level employees only. California, Maine and Washington laws are specific for postsecondary and/or community colleges
[4] Coverage for employees of more than one governmental level
[5] Teachers or personnel with similar or higher status.
[6] Below the rank of teacher, non-administrative support personnel
Any or all levels of supervisors and administrators, in one or more laws in the state
[7] This column is checked only if community colleges are noted specifically in law. State structures vary, and community colleges may be included in the K-12 system, in the postsecondary system, or may be a separate system
[8] This column is checked if union security provisions are present in one or more of the state laws

Source: Adapted from Education Commission of the States, 1980, pp. 12-14.

FACTORS INFLUENCING THE GROWTH OF UNIONISM

Five factors appear to significantly influence the development of collective bargaining in postsecondary education: the legal environment, the nature of postsecondary institutions, economic pressures, the trend toward government centralization, and previous labor relations experience. These factors are discussed separately below, but in practice they interact in a complex way to affect the nature and extent of collective bargaining. Moreover, as will become evident in Chapter Three, it is often not clear whether some of these factors are effects rather than causes of collective bargaining. Thus the relationship of these factors to the existence of collective bargaining should be regarded as suggestive or roughly predictive, but not strictly causal in the scientific sense.

Table 2 Extent of Academic Collective Bargaining, 1966-1981

Year	Agreements (Contracts)	Agents	Agents: Two-Year	Agents: Four-Year	Agents: Public	Agents: Private	Employees Covered
1966	9	19	19	0	19	0	5,200
1967	19	29	28	1	28	1	7,000
1968	32	52	50	2	51	1	14,300
1969	57	77	73	4	75	2	36,100
1970	86	106	92	13	101	4	47,300
1971	105	131	110	21	121	10	72,400
1972	128	170	131	39	151	19	84,300
1973	153	196	142	54	166	30	87,700
1974	211	277	180	97	222	55	92,300
1975	218	301	190	111	235	66	100,000
1976	234	343	218	125	269	74	117,400
1977	266	343	224	119	267	76	125,000
1978	301	382	251	131	302	80	141,000
1979	337	406	261	145	318	88	Not Available
1980	359	427	276	151	335	92	Not Available
1981	382	422	284	138	336	86	167,506

Source: Adapted from Douglas and Kramer, 1982, pp. 2-40, 58-59, except for "Employees Covered," which is estimated for 1966-1974 for Garbarino, 1975, p. 56; for 1975-1978 from The Chronicle of Higher Education, May 31, 1976, and March 19, 1979; and for 1981 from Douglas and Kramer, 1982, p. v.

Legal Environment

Studies of collective bargaining in postsecondary education have fairly clearly established that bargaining is promoted by the existence of a favorable legal environment, particularly the existence of supportive state legislation. In a few states such as Illinois, collective bargaining has developed despite the lack of supportive legislation, but these states are exceptions

There is also some evidence that the type of statute enacted by a state may influence the development of collective bargaining. For example, Joseph Garbarino, a prominent scholar in this field, has analyzed the distribution of academic collective bargaining as a function of type of statute and finds that it is (1) most common in states with comprehensive laws that extend bargaining rights to all public employees, (2) less common in states with weak "meet and confer" laws, and (3) least common in states without statutes and with unfavorable case law (1975, p. 63). In addition to directly encouraging union organizing activity, strong comprehensive statutes may indirectly encourage faculty to unionize as a defense against the expected gains of other employee groups who have previously entered into collective bargaining. An example of this defensive approach is provided by New Jersey's Rutgers University, whose faculty organized reportedly because the community college and state college faculties had previously done so (Begin, 1976, p. 29).

In addition to these general effects, the legal environment may have specific impact on the development of collective bargaining. For example, statutory definition of the employer, criteria for unit determination, and scope of bargainable issues may all significantly affect its growth and relationships under the statute, as will be illustrated later in this chapter.

Nature of the Institution

The characteristics of an institution also determine in part whether collective bargaining develops as well as influence the form it takes if it does develop. Perhaps the most obvious and most puzzling example of the influence of institutional characteristics is the previously noted fact that faculty members have chosen to organize more often at far more public than private institutions. This may be because traditional faculty governance mechanisms are better established in private colleges and universities than in public institutions and provide their faculty with an alternative to collective bargaining. Another explanation may be that faculty

at public institutions hope to realize economic advantages through increasing the institution's revenue by direct bargaining and union legislative influence, whereas faculty at private institutions can only hope to gain economically as a result of relatively limited opportunities for internal reallocations which may themselves have detrimental effects on working conditions.

A second example of the influence of institutional attributes is the fact that faculty at two-year institutions are more likely to unionize than are those at four-year colleges or universities. Moreover, faculty in those four-year institutions which emphasize teaching and undergraduate education are more likely to unionize than are those at more prestigious research-oriented universities. Two-year colleges seem particularly likely to unionize because of their historic relationship with elementary and secondary schools, where collective bargaining has been more widely accepted than among colleges and universities. It is also possible that the constitutional autonomy often granted to research-oriented public universities may have protected these institutions from some of the external pressures that will be discussed in the next section and that seem to lead to collective bargaining. Another possibility is that the development of collective bargaining is inversely proportional to the level of faculty participation in governance prior to the enactment of collective bargaining laws. This theory rests on the proposition that faculty participation in governance is generally strongest at research-oriented universities, somewhat weaker at state colleges, and generally weakest in two-year or community colleges. However, after analyzing the results of a 1969 AAUP survey of faculty participation levels, Garbarino concluded that participation levels did not vary significantly between those institutions which later adopted collective bargaining and those that did not do so (Garbarino, 1975, p. 71)

Another important institutional factor which appears to influence the development of collective bargaining is the size of the institution and its degree of administrative centralization. Collective bargaining is far more prevalent among institutions which are part of large multi-campus systems than among single-campus institutions, and it is highest in those multi-campus systems consisting of both two- and four-year institutions. This latter fact may imply that faculty at four-year institutions who would not otherwise adopt collective bargaining are forced to do so in order to defend their position against the encroachment of the two-year institutions, or because they believe they would be outvoted by their two-year colleagues (Garbarino, 1975, p. 72). The prevalence of collective bargaining in multi-campus systems may also help explain its relative infrequency in private institutions, since multi-campus systems are much more common in the public than in the private sector.

Economic Pressures

Economic pressures have contributed to the expansion of collective bargaining in postsecondary education in two separate ways.

First, higher education has traditionally enjoyed a preferred status in the funding priorities of most states. As government resources have become more limited and demands for government services have increased, the competition for the allocation of state resources has intensified and as a result the once secure position of higher education has become far less certain. This competition has forced educational institutions to stress better management and increased efficiency, which in many cases has led to greater centralization and formalization of authority, which, as will be seen below, tends to lead faculty to adopt collective bargaining to protect their position with respect to other groups within the institution.

Second, as economic conditions have worsened, faculty at two-year institutions, and junior faculty at four-year colleges, followed by their tenured senior colleagues, have seen collective bargaining as a potential means of maintaining or improving salaries and working conditions. Unions achieved some early success in increasing salaries, such as at the University of Alaska and the City University of New York, and although the evidence about their overall effect on faculty compensation is far from clear, these early successes and the promises of substantial increases made by the unions undoubtedly contributed to the decision of some faculty members to vote for collective bargaining at their institution.

Trend Toward Centralization

The economic pressures described above have combined with a variety of other forces to produce a trend toward administrative centralization and formalization in all sectors of government, including public postsecondary education. The centralization of decision making diminishes the effectiveness of traditional governance mechanisms at the local campus level and increases the importance of political decision-making mechanisms at the state level. Many faculty feel that the development of a strong union is the only method to allow them to bargain effectively with increasingly powerful administrators and governing boards and to give them political leverage in influencing legislators as legislatures assume more and more responsibility for determining educational policies through funding (Garbarino, 1975). But collective bargaining may be a cause as well as an effect of centralization and the evidence tends to suggest that collective bargaining contributes to

increasing centralization. Regardless of the precise relationship between collective bargaining and centralization, it is clear that they are highly correlated and probably mutually reinforcing.

Previous Experience With Labor Relations

Finally, it appears that prior experience with labor relations in general influences the development of collective bargaining in postsecondary education. Faculty collective bargaining began in the highly industrialized states of the East and Midwest which had extensive histories of collective bargaining in industrial labor relations and where its extension to public postsecondary education was more readily accepted as a method of dealing with faculty labor relations. Even today these states still account for a substantial amount of all collective bargaining in postsecondary education.

Labor relations outside of the educational sector also have had an impact on postsecondary education through the active role that the National Labor Relations Board has played in implementing the National Labor Relations Act in all areas of private employment. When the NLRB extended its jurisdiction to colleges and universities in 1970, it naturally drew on its three and a half decades of experience with collective bargaining in business and industry. And because state public employment relation boards tend to look to decisions of the NLRB and the federal courts for guidance in shaping their often broadly drawn state statutes, its experience in the private industrial sector has influenced not only private but also public postsecondary education.

THE COLLECTIVE BARGAINING PROCESS

The first step in the collective bargaining process occurs when a group of employees determines that their interests can best be served by forming a union and exercising their bargaining rights guaranteed by law. Their organization may approach their employer and ask to be recognized as the exclusive representative of all the employees within a proposed unit, or it may seek certification by the Public Employment Relations Board (or other similar state administrative agency) as an exclusive representative. In either case, the organization is required to demonstrate a certain level of interest or support on the part of a specified percentage of the employees it claims to represent. If a certification election is required, the affected employees are given the opportunity to choose between this organization, any other competing organizations that wish to represent these employees, and the option of "no representation."

During the certification process, the employer or other employee organizations may challenge the appropriateness of the unit proposed by the organization seeking certification. In this event, the Public Employment Relations Board is called on to make a unit determination. Statutes set forth more or less specific criteria to be used by the Board in this determination, but the Board may look to decisions of the NLRB or similar agencies in other states for guidance.

Closely related to unit determination is the question of which employees are entitled to collective bargaining rights under the state statute. Either the Legislature or courts may define classes of employees who are excluded from the protection of the statute. This issue may be raised at the time of initial determination, or as was the case in Yeshiva, the employer may raise the issue after the union has been certified but before bargaining begins.

Once an exclusive employee representative has been certified or recognized and the appropriate unit has been specified, then bargaining may begin. Representatives of the employer and the employee (and in some states other parties) will meet to discuss the terms of the possible contract. The Public Employment Relations Board may be called on to resolve disputes when one party charges the other with committing unfair labor practices as specified in the appropriate statute. These disputes commonly involve the scope of bargaining, where either the employer or the employee organization wishes to bargain on an issue that the other feels is outside of the statutorily prescribed scope of bargaining If the Board finds that an issue is within the mandatory scope of bargaining, it may require the parties to bargain on it and either party may insist on including it within the contract.

The initial phase of bargaining ends when a contract has been signed or an impasse is reached. Usually the statute specifies that either party may declare an impasse, and it sets forth certain remedies, including mediation, fact finding, and perhaps compulsory arbitration, to overcome the impasse. In some states, employees are permitted to strike once the impasse procedure has been exhausted and employers may also "lock out" striking employees.

In the remaining sections of this chapter, these various steps in the collective bargaining process are examined in greater detail, with the provisions of California law compared with those employed in other jurisdictions.

DESIGNATION OF THE EMPLOYER

The designation of the employer may influence the development of collective bargaining in postsecondary education significantly because it influences the bargaining structure and the degree of centralization and state control which result from bargaining (Weinberg, 1976, p. 105). Generally the statute authorizing collective bargaining specifies the employer, although in a few states such as New Jersey and Pennsylvania the statute is silent and interpretation has been required to ascertain who is the employer of record.

In New Jersey and Pennsylvania, as well as New York and other states that have comprehensive public employee bargaining laws, the governor is designated as the employer. In these states, the governor charges an administrative agency, such as the Office of Employee Relations in New York, with administering the statute and conducting all negotiations with employee organizations. Usually some mechanism exists by which this agency consults with the governing board or administration of the educational institution in question, thereby taking into account the unique circumstances faced by educational institutions. However, in some states such as Pennsylvania, both campus-level and systemwide administrators may be effectively excluded from the collective bargaining process.

In contrast to states whose governor is specified as the employer, Michigan represents the opposite end of the spectrum, with each institution being the employer of record for purposes of bargaining with its employee groups. Michigan's pattern stems from its tradition of decentralized governance of higher education in which each institution is completely autonomous from the others.

Somewhere between these two extremes are states such as Alaska, Florida, Hawaii, Massachusetts, Montana, and Rhode Island in which some intermediate-level authority such as a coordinating body or governing board has responsibility for bargaining with employees of all educational institutions. This model is applied somewhat differently in each state. In Montana, the Commissioner of Education is the employer of record but bargains separately with employees at each of the state's several educational institutions. In Alaska and Florida, employees at a number of institutions which form a single system may bargain with the employer as a group while other institutions bargain separately. In Hawaii, the Board of Regents is designated as the employer, but the governor's office and the Board of Regents jointly negotiate with employees at all campuses of the University of Hawaii.

California tends toward the pattern illustrated by Alaska and Florida. Here, each segment of postsecondary education is treated in a distinct fashion. The Board of Regents is the employer for the University of California, as is the Board of Trustees for the California State University, and each local Community College district governing board for its district. This district-level bargaining for Community Colleges parallels the provisions for elementary and secondary schools under the Educational Employment Relations Act (EERA) and reflects the fact that, despite substantial state involvement in funding for Community Colleges, the final decisions about allocation of funds are made by local governing boards. The differential treatment of the three systems in California is a result of the separate enactment of the Educational Employment Relations Act and the Higher Education Employer-Employee Relations Act and indicates a legislative determination that the basic differences between the systems require different approaches to handling labor relations.

CHOICE OF THE BARGAINING AGENT

One of the primary advantages of collective bargaining for employees is that they select one organization to act as their exclusive representative in negotiations with their employer. From their perspective, this is a considerable improvement over previous practice when a variety of organizations might informally bargain with the employer but without the authority to speak for all employees.

In selecting an exclusive representative, faculty usually have the choice of forming an independent union or selecting one of the three nationally recognized organizations representing college and university faculty. Occasionally, as in New York, a faculty senate competes for the right to represent faculty during collective bargaining. The three large faculty unions are the American Association of University Professors (AAUP), the National Education Association (NEA), and the American Federation of Teachers (AFT). Sometimes two of the three--usually the AAUP and the AFT--form a coalition to represent a particular institution jointly in order to avoid destructive competition. Table 3 shows the distribution of these organizations as bargaining agents among the several major types of colleges and universities.

Until 1972, the AAUP was simply a professional association of faculty members. After much internal debate, the association chose to begin competing as a union in collective bargaining elections. Today, a majority of the AAUP's chapters are involved in collective

bargaining (Magarrell, 1982, p. 1). The AAUP has enjoyed its greatest success at four-year institutions where its long record of support for collegiality and traditional governance mechanisms has led many faculty members to prefer it.

The National Education Association was long a professional association of elementary and secondary school teachers and administrators, but when public school employees began to unionize in the early '60s, it began to compete in representational elections. Because of the historical ties between the schools and community colleges, the NEA has been able to attract substantial support from two-year college faculty. It also represents some 40 four-year public and private institutions.

The American Federation of Teachers is an affiliate of the AFL-CIO which, like the NEA, began representing public school employees and later undertook to represent faculty in collective bargaining. The AFT has argued that its affiliation with a larger organization representing workers in all sectors of the economy provides additional leverage that the NEA and the AAUP cannot offer. In contrast to the other two organizations, the AFT has clearly identified itself as a union and appealed to those faculty members who believe that aggressive union activity is the only way to secure their

TABLE 3 Recognized Bargaining Agents, January 1982

	Public			Private			Total		
Bargaining Agent	Four-Year & Professional	Two-Year	Total	Four-Year & Professional	Two-Year	Total	Four-Year & Professional	Two-Year	Total
AAUP	21	5	26	27	1	28	48	6	54
AFT	15	75	90	26	6	32	41	81	122
NEA	18	168	186	15	4	19	33	172	201
Independent	5	20	25	4	2	6	9	22	31
AAUP/AFT	2	1	3	0	0	0	2	1	3
AAUP/NEA	1	0	1	0	0	0	1	0	1
AAUP/Independent	0	0	0	1	0	1	1	0	1
AFGE	2	0	2	0	0	0	2	0	2
AFSCME	1	1	2	0	0	0	1	1	2
Independent/NEA	0	1	1	0	0	0	0	1	1
Total	65	271	336	73	13	86	138	284	422

Source: Douglas and Kramer, 1982, p. 60.

rights. For these reasons, it has been most successful at two-year colleges and at those four-year institutions where traditional faculty governance mechanisms have been least effective.

In California, the California Teacher's Association, an affiliate of the National Education Association has been elected bargaining agent in a majority of Community College districts. As of 1979, it served as agent in 36 districts, compared to 13 for the AFT and none for the AAUP (Close, 1979, appendix). At the State University, the results of the representation election are in question, but the United Professors of California--an AFT affiliate--and the Congress of Faculty Associations--a coalition of organizations including AAUP and CTA--are fairly equally matched in support. At the University of California, independent faculty associations have been formed, but agents have not been elected except at Santa Cruz, where the bargaining agent is the Santa Cruz Faculty Association, an affiliate of the AAUP. (Appendix B lists all of California's postsecondary institutions, both public and private, that have elected faculty bargaining agents.)

RECOGNITION AND CERTIFICATION

The most direct approach for an employee organization to take in becoming an exclusive bargaining representative is to request recognition by the employer. Statutes usually require an organization to demonstrate that a specified proportion of the employees it wishes to represent (generally between 10 and 30 percent) are either its members or support its efforts to become an exclusive representative. In California, both EERA and HEERA require that an organization show majority support. Once this threshold is achieved, the employer may recognize the organization as an exclusive representative if no other organization files a competing claim and if the unit proposed by the organization is acceptable to the employer.

If the employer refuses to recognize the organization, however, it may request certification from the Public Employment Relations Board or other appropriate state administrative agency. If the employee organization can demonstrate the required level of interest or support on the part of the employees it seeks to represent, the Board will order a representation election. In the election, the employees are allowed to choose between all competing employee organizations and, usually, the choice of no representative. If no representative is selected, employees are then free to continue to negotiate informally with the employer.

Before the certification election, the employer or a competing employee organization typically asks the Public Employment Relations Board to rule on two questions. (1) which employees are covered by the statute and thus may vote in the election; and (2) what is the proper election unit. Generally, the employer seeks to exclude as many employees or classes of employees as possible, but the proper size and composition of the election unit may depend on circumstances. Sometimes employers seek large comprehensive units to avoid the "whip-sawing" problem created by the competing demands of a large number of small units represented by different agents. On the other hand, employers sometimes prefer small units because the agents may be unable to exert much political and economic pressure since they represent only a small number of employees. Employee organizations generally agree that all possible employees should be included within the coverage of the collective bargaining statute, but they sometimes differ on the proper size of units. Small, narrowly defined units tend to favor the election of special-interest or single-purpose unions, while large comprehensive units favor larger organizations with more resources to conduct an election campaign and broader appeal to different groups of employees. Thus, while defining coverage and delineating unit size are procedural questions, they have a critical bearing on the outcome of collective bargaining elections (Alleyne, 1980, p 574) and will be discussed in greater detail in succeeding sections.

DETERMINIATION OF COVERAGE

The process of determining coverage involves resolution of which employees are entitled to engage in collective bargaining under the protection of the enabling statute. Typically a statute will define its coverage both as extending to all employees within a certain field, such as all employees of public schools in the state, and also as excluding certain specified groups of employees, such as managerial employees, from the protection of the act. The courts and administering agency may also create categories of exclusions.

The determination of coverage relates closely to the process of unit determination, discussed in the next section. The distinction is that coverage is the more basic threshold question, addressing who is protected by the statute, while unit determination addresses how covered employees should be grouped for purposes of electing the exclusive representative and bargaining with the employer Because coverage is the more fundamental issue, it permeates the collective bargaining process and may be raised at several points in the process, including unit determination, the challenge of

ballots after an election, petitions for unit modification, and claims of unfair practice by either the employer or the employee organization [Foothill-De Anza Community College District, PERB Decision No. 79 (1978)]. By contrast, opportunities for contesting the grouping of covered employees are limited to the unit determination and modification processes. In many jurisdictions, including California, the unit determination rulings of the administrative agency are final, absent special circumstances which would justify judicial review (see Cal. Gov't. Code Sections 3542 and 3564).

In determining who is covered by the statute, five categories of employees have proved most troublesome: (1) managers, (2) confidential employees, (3) supervisors, (4) students, and (5) persons with only a casual or limited relationship to the employer. Challenges may involve either the definition of one of these terms or the determination of whether a particular employee falls within that definition.

Managers

Managerial employees are excluded from coverage under the NLRA and all state public employee collective bargaining laws. As discussed in Chapter One, the managerial exclusion under federal law was developed through judicial interpretation and furnished the basis for the Yeshiva decision which excluded faculty as managerial employees. Under federal case law, managerial employees are those who "formulate and effectuate management policies" and are "aligned with management" because they represent management's interests and take or recommend discretionary actions which establish or implement the employer's policies [NLRB vs. Bell Aerospace, 416 U.S. 267 (1974)]. This exclusion was developed in order to ensure employers that they would have the undivided loyalty of those individuals who manage and direct their operations [Beesley vs. Food Fair of North Carolina, 416 U.S. 653, 661-662 (1974)].

California, like most other states, has adopted statutory definitions of managerial employees that parallel those developed by the NLRB and the federal courts (Alleyne, 1980, pp. 588-592). Thus Section 3540.1(g) of the EERA and Section 3562(1) of the HEERA define managerial employees as those with "significant responsibilities" for formulating or administering programs and policies.

EERA: In the Lompoc Case, the Public Employment Relations Board held that despite the disjunctive word or separating formulating and administering, Section 3540.1(g) of the EERA should be read as defining managerial employees as those who both formulate policies and administer programs [EERB Decision No. 13, (1976)]. The Board has further defined managerial employees as those having discretion

to develop or modify the employer's goals and priorities and the ability to implement these policies through the exercise of independent judgment [Hartnell Community College District, PERB Decision No. 81, (1979)] [Berkeley Unified School District, PERB Decision No. 101, (1980)]. Based on these interpretations, PERB has declared as managerial employees under the EERA an affirmative action and purchasing officer [Ventura Community College District, PERB Decision No. 139, July 11, (1980)] and a Title IX coordinator [Berkeley Unified School District, PERB Decision No. 101, (1979)].

HEERA: The HEERA definition of managerial employees restates the language from the EERA, but then declares (Section 3562(1):

> No employee or group of employees shall be deemed to be managerial employees solely because the employee or group of employees participate in decisions with respect to courses, curriculum, personnel and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of such duties.

Apparently this language was designed to preclude the kind of problems which have arisen under the federal law in Yeshiva and related cases regarding the managerial status of faculty members and particularly of department chairs. These provisions of HEERA may soon be tested because the University of California and the California State University have both challenged the right of certain employees (including some department chairs at the State University) to participate in collective bargaining on the grounds that they are managerial employees as defined in Section 3562(1). However, it seems clear from the language of Section 3562(1) and the declarations of legislative intent in Section 3560 that the bulk of faculty at the University of California and the California State University will not be subject to any Yeshiva-derived claim that they are managerial employees.

Confidential Employees

EERA: Section 3540.1(c) of the EERA defines confidential employees as those who routinely have access to information about employer-employee relations. It denies these employees collective bargaining rights because of the potential conflict of interest involved with their access to information about the bargaining process. The PERB has held, however, that if employees merely compile or have access to routine personnel and budget information, they cannot be excluded from the bargaining unit on the basis of the confidential

employee exclusion [Sierra Sands, EERB Decision No. 2 (1976)] [San Diego Community College District, EERB Decision No. 18 (1977)].

HEERA: Under HEERA, the problem of employees who have only tangential involvement in the bargaining process is largely avoided because Section 3562(e) requires that a confidential employee be involved in developing and presenting management positions during bargaining or have access to information which significantly contributes to the development of these positions.

Supervisors

The third category of employees typically excluded from collective bargaining are supervisors. Section 2(11) of the NLRA [29 USC 152(11) (1970)] lists a number of personnel transactions and defines supervisory employees as those who exercise independent judgment in taking or effectively recommending any one of these actions. The courts have held that an employee need only exercise one of the powers enumerated in Section 2(11) in order to be classified as a supervisor [e.g., NLRB vs. Quincy Steel Casting Company, 200 F. 2d293 (First Cir., 1952)].

In applying the supervisory exclusion to employees in educational institutions, the most difficult problem faced by the NLRB has been the determination of whether department chairs are considered supervisory employees The Board's decisions have been split on this issue and do not provide definitive guidance, but the Board has established criteria to determine the applicability of the supervisory exclusion. They include: the degree of involvement in recruitment; influence over promotion, tenure, and other personnel matters; ability to direct other faculty; participation in development of budgets; adjusting faculty salaries; and the extent of teaching duties and additional responsibilities (Ferguson, Bergan, and Braff, 1975, p. 184). The significance of the supervisory exclusion and its interpretation by the NLRB is now questionable in light of the Yeshiva decision. In Yeshiva, the Court based its holding on an interpretation of the judicially created managerial exclusion and never reached the issue of the interpretation of the statutory supervisory exclusion. However, although the NLRB's decisions on the supervisory question may not have been disturbed by Yeshiva, the effect of the Supreme Court's decision may be to make the determination of supervisory status irrelevant for faculty collective bargaining in the private sector.

Most states define supervisory employees either identically to or substantially like the NLRA, but many states allow supervisors to participate in collective bargaining in a distinct unit represented by a separate employee organization from that which represents

non-supervisors. Like the NLRB, state public employment relation boards have had difficulty applying the supervisory exclusion to faculty. Some states such as New York, Massachusetts, Rhode Island, and New Jersey include department chairmen, while other states such as Delaware and Michigan exclude them (Id. at pp. 194-195).

EERA: The definition of supervisory employees under Section 3540 1(n) of the EERA is virtually identical to that under the NLRA. The Public Employment Relations Board has followed the NLRB's interpretation of this language to the extent that if employees perform or effectively recommend the performance of any one of the enumerated personnel functions, they will be categorized as supervisors [San Diego Community College District, EERB Decision No. 8 (1977)]. However, PERB has deviated from NLRB precedent in holding that "merely clerical or routine" performance of these functions is sufficient to classify an employee as a supervisor [Sweetwater Union High School District, EERB Decision No. 4 (1976)]. Under the NLRB's interpretation, one must exercise independent judgment to be so classified. PERB's decision probably reflects the fact that the EERA allows supervisors to bargain, albeit in a separate unit from the rank and file, and thus the results of a restrictive application of the definition are not as severe as under the NLRA where supervisors are completely excluded from the collective bargaining process (Alleyne, 1980, p. 596).

HEERA: As is the case with the managerial exclusion, HEERA attempts to preclude problems of interpretation here by adding to its definition of a supervisory employee clauses indicating (1) that employees are not to be classified as supervisors if their duties are substantially similar to those of their subordinates and (2) that department chairmen are not to be excluded as supervisors solely because they supervise other faculty members, academic programs, or a department, unless they are appointed for an indefinite term by the employer (Section 3560.3)

Student Employees

The fourth controversial issue is the inclusion or exclusion of student employees from the coverage of the collective bargaining statute. In the Adelphi case, the NLRB held that student teaching assistants were excluded from the coverage of the NLRA [Adelphi University, 195 NLRB 239 (1972)]. Most states, such as New York, follow the lead of the NLRB and exclude teaching assistants on the theory that their employment is really part of their educational experience (Ferguson, Bergan, and Braff, 1975, p. 192). The state of Michigan has taken a contrary position on this issue. The Michigan Employment Relations Commission held that teaching assistants and staff assistants were employees and were, therefore, entitled to bargaining rights under the Michigan Public Employment Relations Act [University of Michigan, ERC, Case No. C76 K-370 (1981)].

EERA: This problem does not arise at the Community College level because the concern in this area is largely with graduate teaching assistants.

HEERA: Section 3562(f) of HEERA gives the Public Employment Relations Board authority to exclude from the coverage of the act student employees unless their employment is unrelated to their status as students or the educational aspects of their employment are subordinate to the services that they provide.

Casual Employees

The final area of controversy regarding coverage of collective bargaining statutes relates to casual employees The statutes generally do not address this issue, but administrative agencies and courts generally require that an individual have a sufficient level of contact with the employer in order to enjoy the protection of the statute.

EERA: In interpreting EERA, the Public Employment Relations Board has held that substitute teachers may be entitled to participate in collective bargaining if they have taught for 10 percent of the previous school year or have taught for 10 percent of the current year up to the time of the election [Palo Alto Unified School District, PERB Decision No. 84 (1979)].

HEERA: The casual employee problem may be raised under HEERA as a result of challenges filed during the recent State University runoff elections. Certain employees who cast ballots in the faculty election had either been temporarily laid off or retired early and returned for part-time teaching assignments. It appears that the inclusion of these employees in the bargaining unit is permissible but not mandatory, and PERB will probably be required to rule on their status [53 CPER, 28, (1982)].

UNIT DETERMINATION

As noted above, unit determination involves the grouping of employees for purposes of electing an exclusive representative and bargaining with the employer. Some statutes authorizing collective bargaining precisely define the bargaining unit, but most commonly they merely describe general criteria to be used by the administering agency to determine the appropriate unit. In California and most states, the determination made by the Public Employment Relations Board as to unit determination is not reviewable by the courts unless it raises an issue of special importance and PERB joins in the request for judicial review.

Over several decades of adjudication, the NLRB has evolved the following list of factors to be considered in unit determination (Alleyne, 1980, p. 579):

1. Past bargaining history;

2. Community of interest;

    a. Degree of management centralization (especially with regard to labor relations);

    b. Degree of interchange of employees;

    c. Degree of autonomy or interdependence between plants or campuses;

    d. Differences and similarities in the level of education, skills, and functional activities of employees; and

    e. Geographic location.

Most states adhere fairly closely to these federal standards, and in fact the California courts have virtually mandated their use in interpreting the EERA and HEERA (ibid). In addition, both HEERA and EERA list additional unit determination criteria (such as effect on the employer's organizational structure) and specific rules or presumptions about what unit is appropriate in particular cases (for example, that all classroom teachers shall be in a single unit). Appendix A contains a complete listing of these unit determination criteria in the two acts, but four issues deserve note here.

Inclusion of Professional School Faculty

One of the earliest unit determination problems faced by the NLRB was whether faculty at professional schools should be placed in a separate unit from all other university faculty. In an early line of cases including Syracuse University [205 NLRB 641 (1973)] and Fordham University [193 NLRB 132 (1971)], the NLRB held that professional school faculty could be placed in a separate unit, at least where a separate organization was seeking to represent the faculty from professional schools. This is one area in which California has diverged significantly from the NLRB case law, in that HEERA would place faculty members at professional schools in the University of California in the same unit with other faculty.

Inclusion of Part-Time Faculty

A second issue in unit determination is whether part-time and full-time faculty should be combined in the same bargaining unit The NLRB has vacillated on this point, first deciding that part-timers should be included in the same unit as full-time faculty, and later reversing itself (Ferguson, Bergan, and Braff, 1975, p. 187). Some states such as Hawaii include part-timers; others such as Massachusetts and Michigan follow the NLRB and exclude them; and New York includes them at SUNY and excludes them at CUNY. In California, the Public Employment Relations Board has also had some difficulty with this issue. When it first faced the issue under EERA, it ruled that part-timers should be included in the regular faculty unit if they had taught three out of the preceding six semesters [Los Rios Community College District, EERB Decision No. 18 (1977)]. But later in the Hartnell Case, [PERB Decision No. 81 (1979)], it abandoned this distinction and included all part-timers in the same bargaining unit with full-timers For the California State University, PERB has settled on a single faculty unit, and for the University of California, Section 3579 of HEERA requires that the faculty unit contain only members of the Academic Senate, which means those of regular ladder rank, who are generally full-time faculty.

Inclusion of Non-Teaching Professionals

A third problem is whether non-teaching professionals such as librarians and athletic coaches should be included in the same unit with the regular teaching faculty. The NLRB has established the following criteria to determine whether non-teaching professional support staff will be included in the same unit with regular faculty (Ferguson, Bergen, and Braff, 1975, p. 189):

1. Are they professionals?
2. Are their duties closely related to teaching?
3. Do they have a community of interest with the regular teaching faculty?

Based on this criteria, the NLRB has held that librarians, coaches, and guidance counselors may be included with other faculty members in the same bargaining unit (id. et, 191). Large systems such as the Pennsylvania State Colleges and SUNY in New York have tended to follow the NLRB and include large numbers of non-teaching professionals, whereas single campus research-oriented universities have been more likely to choose narrowly drawn units including only teaching faculty and perhaps librarians (Weinberg, 1976, pp. 100-101). Under EERA, at the California Community Colleges, the general tendency has been to place non-teaching professionals in

separate units from teaching faculty. Under HEERA, at the California State University, approximately 1,300 academic support personnel have been placed in a separate unit represented by the United Professors of California (53 CPER, p. 27). At the University of California, while the final unit determinations have not been made, the proposed units would place librarians in one unit, other academic and allied support professionals in a second unit, health care professionals in a third, and staff and administrative professionals in a fourth (52 CPER, p. 49).

Systemwide Versus Campus Units

Of all unit determination issues, probably the most controversial is the size of the proposed unit. The NLRB has rarely been called upon to rule on this issue because the problem arises primarily in public systems. However, in the Fairleigh Dickinson University case, the NLRB did hold that a single unit of all faculty at this private multi-campus university was appropriate. Most states, including Alaska, Hawaii, New York, and Pennsylvania, have opted for large systemwide units at their public institutions, but a few such as Delaware, Michigan, and Rhode Island have gone in the opposite direction (Weinberg, 1976, p. 98).

EERA: In California, under EERA the question of unit size at the Community Colleges is somewhat complicated. Section 3545(a) sets forth general unit determination criteria similar to those under the NLRA, but subsection (b) sets up a presumption that the appropriate unit for classroom teachers shall include all classroom teachers in the district rather than having separate units for each location. In attempting to reconcile these two standards, the Public Employment Relations Board originally held in Belmont that the determination turned on the definition of the term "classroom teacher" [EERB Decision No. 7 (1976)]. However, it later altered its position and established a presumption that a single unit of all classroom teachers in the district is appropriate and will be approved absent a showing that another unit is more appropriate [Peralta Community College District, PERB Decision No. 77 (1978)]. The Peralta presumption has been applied in a number of subsequent cases, but occasionally it has been rebutted as in Mendocino [PERB Decision No. 144 (1980)] where PERB agreed to the establishment of two separate faculty units where there was a history of separate bargaining which would have been disrupted by strict adherence to the Peralta rule.

PERB also has used the technique of presumptively appropriate unit definitions in unit determination cases involving classified employees covered by EERA. In Sweetwater Union High School District [EERB Decision No. 4 (1976)], it established three units of classi-

fied employees which it holds to be appropriate absent a showing that some other unit arrangement is more appropriate. These units include: (1) instructional aides; (2) technical, clerical, and business services staff, and (3) operational support services staff. In the Compton Case [PERB Decision No. 109 (1979)], PERB established the circumstances under which the presumption in favor of the "Sweetwater units" can be overcome. If a unit other than a Sweetwater unit has been requested and there is not a request for a Sweetwater unit on file with PERB, then the requesting party must demonstrate that a Sweetwater unit would not be appropriate under the circumstances. On the other hand, if there is a competing claim for a Sweetwater unit, then the party seeking the non-Sweetwater unit must show that the proposed unit would be superior using community-of-interest criteria listed in Section 3545. It would appear that the Sweetwater analysis has also influenced PERB's rulings under HEERA, since the unit determinations at the State University and the proposed determinations at the University of California adhere relatively closely to the Sweetwater units except for skilled crafts and health care professional staff who are covered by special provisions in HEERA.

HEERA: The units at the California State University are systemwide and those at the University of California may also be, although the staff at the Lawrence Livermore Laboratory will probably be handled separately, and the faculty bargaining will be conducted according to special procedures set forth in Section 3579. These procedures specify that faculty bargaining will be conducted on a campus-by-campus basis on local issues until and if any one bargaining agent attains 35 percent of all members of the Academic Senate systemwide, at which time a statewide election would be held.

Status of Unit Determination in California

EERA: No up-to-date accurate information is available on unit determination within the California Community Colleges. In 1979, the Chancellor's Office of the Community Colleges surveyed all 70 Community College districts and reported that 50 of them were engaged in bargaining with both certificated (professional) and classified employees (staff); an additional 3 bargained only with certificated employees, and 16 bargained with only classified employees (Close, 1979, p. 6). The National Center for the Study of Collective Bargaining at Baruch College in New York lists 56 Community College districts in California as having exclusive bargaining representatives for units including faculty members (Douglas and Kramer, 1982, p. 50). And while PERB makes unit determinations for Community College districts using the general criteria which have been developed under the EERA, it does not maintain statistics on these districts separately from those for the public schools.

TABLE 4 Unit Election Results, California State University, 1982

UNIT 1 - PHYSICIANS (140/106)	
California Federation of the Union of American Physicians and Dentists	83
United Professions of California	3
No representation	19
Challenged ballots	1
*UNIT II - HEALTH CARE SUPPORT (279/217)	
California State Employees Association	96
United Professors of California	64
Retail Clerks, Professional Division	14
No representation	41
Challenged ballots	2
Voided ballots	2
*UNIT III - FACULTY (19,329/15,424)	
United Professors of California	6,316
Congress of Faculty Association	6,267
No representation	2,400
Challenged ballots	441
Voided ballots	28
*UNIT IV - ACADEMIC SUPPORT (1,335/1,031)	
United Professors of California	505
Congress of Faculty Associations	391
No representation	123
Challenged ballots	12
Voided ballots	2
UNIT V - OPERATIONS SUPPORT SERVICES (2,108/1,140)	
California State Employees Association	1,052
No representation	76
Challenged ballots	12
Voided ballots	9
UNIT VI - SKILLED CRAFT (815/691)	
State Employees Trades Council, Laborers Int'l. Union	346
California State Employees Association	224
International Union of Operating Engineers	92
No representation	22
Challenged ballots	7
Voided ballots	10
UNIT VII - CLERICAL (6,670/3,857)	
California State Employees Association	2,000

Note: Total ballots mailed/valid ballots cast are in parantheses.) Run-off elections are asterisked.

Source: 52 California Public Employees Relations, p. 49.

HEERA: During 1981, unit determination proceedings for bargaining units for the 30,000 faculty and staff were conducted at the California State University. Table 4 shows the results of the initial election held in February 1982 in these bargaining units, and Table 5 shows the results of the run-off election in May which was required in three of the units. In the hotly contested election for the faculty unit, the United Professors of California received 6,473 votes compared to 6,454 for the Coalition of Faculty Associations. This difference of 19 votes was insufficient to determine the outcome of the election, given that 508 ballots were challenged. The State University administration challenged 297 of these ballots, while UPC challenged 198, PERB challenged 11, and CFA challenged 2. Of the ballots challenged by the State University, the majority (224) were based on the allegation that these employees were not eligible to vote in the election because they were not employees on census day or were not employees at the time of the election. The administration also challenged the votes of 73 department chairmen who, in its view, have responsibilities sufficient to classify them as supervisors. Some of the UPC challenges were on the grounds that the individuals voting were really management employees, but the majority of the challenges (140) were based on the argument that the voters were graduate-student lecturers and thus not entitled to inclusion in the bargaining unit. PERB, the administration, and the competing unions have held meetings and plan further meetings to attempt to resolve these disputes. At a hearing in July, 238 contested ballots were resolved, and UPC still led by 12 votes. The remaining 271 uncounted ballots will probably not be resolved until sometime in the fall.

TABLE 5 Run-Off Election Results, California State University, 1982

Unit II - Health Care Support	
CSEA	120
UPC	69
Challenged ballots	0
Voided ballots	3

Unit III - Faculty	
UPC	6,473
CFA	6,454
Challenged ballots	508
Voided ballots	158

Unit IV - Academic Support	
UPC	486
CFA	414
Challenged ballots	11
Voided ballots	6

Source: 53 California Public Employees Relations, p. 27.

Unit determination is at a somewhat more preliminary stage for the University of California. This spring, the PERB hearing officers proposed the 14 units for the University listed in Table 6. However, the University and the competing unions have filed extensive exceptions to the hearing officer's rulings, and it is likely that PERB itself will be called upon to resolve many of the issues unless the parties can agree on a mutually acceptable solution during the informal resolution phase.

INCLUSION OF ADDITIONAL PARTIES TO THE BARGAINING PROCESS

One of the distinguishing characteristics of collective bargaining is that the employer bargains bilaterally with an exclusive representative of all employees within a designated unit. Thus, by definition, under collective bargaining, two of the parties to the bargaining process are representatives of the employer and representatives of the exclusive bargaining agent for the employees. However, additional parties may be present during these negotiations.

Student Representatives

First, California and a few other states, including Alaska, Florida, Maine, Montana, and Oregon, allow students to be present during

TABLE 6 Proposed Units, University of California

Systemwide Units	No. in Unit (approx.)	LLL Units	No. in Unit (approx.)
Operations:		Operations:	
Clerical	30,000	Clerical	700
Service	10,200	Service	500
Skilled Crafts	1,740	Skilled Crafts	475
Technical	6,500	Technical	1,400
Health Care	4,500		
		Professional:	
Professional:		All-Inclusive	3,000
Academic and Allied	10,500		
Staff and Administrative	4,500		
Health Care	5,600		
Librarians	600		

Source: 52 California Public Employment Relations, p. 50.

collective bargaining sessions to observe and comment on the progress of the negotiations (Education Commission of the States, 1980, p. 9). These provisions have generally been enacted by state legislatures under political pressure from student groups who feel that their participation in university governance is threatened by the influence that faculty may gain through the adoption of collective bargaining mechanisms. In exchange for the right to be present during negotiating sessions, Section 3597 of HEERA requires that students maintain confidentiality of the substance of negotiations. HEERA does not specify how disputes over the participation of students are to be resolved, however. Controversy arose when the University of California refused to permit students to participate in negotiations with the exclusive representative for the University's police officers because Section 3597 permits students to participate in negotiations related only to student services into which category the University did not believe police protection to fall. The Student Body Presidents Council appealed for assistance to PERB, which accepted jurisdiction over 3597 type disputes despite the objections of the University [University of California, PERB Decision AD107A-H (1981)]. The decision of the PERB administrative law judge was in favor of the University position He based it on the finding that university police officers' main duties were the protection of the university and its property. The SBPC appealed the decision to the full Board. PERB agreed with the decision, but narrowed the emphasis on some of the reasons for excluding student participation [University of California, PERB Decision No. 253-H (1982)].

Representatives of Outside Agencies

The other possibility is that representatives of outside agencies will be permitted to participate in the negotiating sessions. As discussed earlier, many states designate the governing board of the educational institution as the employer of record. However, since decisions made during the negotiating process may affect state priorities and funding allocations, some states designate representatives of the Governor's Office or the Legislature to participate as observers and advisors in the collective bargaining process. In Hawaii, representatives of the Governor's Office are active participants on the management bargaining team along with representatives of the Board of Regents (Lau and Mortimer, 1976, p. 64). In California, under EERA, this is not an issue because the State is not directly involved in district-level bargaining. Under HEERA, Section 3572 provides that representatives of the Governor, the Speaker of the Assembly, and the Senate Rules Committee may be designated to participate in negotiations between employee organizations and the California State University. Although Section 3572.3 makes no similar provisions for the University of California, it

does require the University administration to maintain close communication with State officials during the negotiation process These arrangements are unique because although many states permit the Governor to appoint observers or negotiators, it is unusual for the Legislature to become directly involved in the bargaining process.

CHARGES OF UNFAIR LABOR PRACTICES

Typically collective bargaining statutes define certain practices which are "unfair" and therefore prohibited. Challenging the actions of the other party to the bargaining process as an unfair labor practice is the basic mechanism for enforcing compliance with the statute. Since such claims are merely a method of enforcing substantive rules discussed in other portions of this chapter, detailed discussion of them here would be unnecessarily repetitive. However, the most common types can be categorized as: (1) unilateral actions during negotiations (usually the employer takes unilateral action on an issue which the union believes to be within the scope of negotiations); (2) surface bargaining or failure to negotiate in good faith; (3) refusal to bargain (usually based on disputes over which issues are properly within scope or which employees are covered under the statute); and (4) refusal to participate in the impasse procedure.

SCOPE OF NEGOTIATION

The question of which issues are within the scope of negotiation is probably as critical to the collective bargaining process as unit determination. As will be seen in the next chapter, the determination of which issues may or may not be bargained can influence the relative positions of the bargaining parties, the fate of academic governance mechanisms, the tradeoffs which are possible during the bargaining process, and the ultimate content of the negotiated agreement.

Generally, the NLRA and most state statutes make negotiation mandatory over "wages, hours, and other terms and conditions of employment," but statutes may also prohibit certain topics such as discrimination, closed shop provisions, and "management prerogatives." Beyond this limited guidance, the administering agency and the courts are left to determine which subjects are mandatory, which are prohibited, and which are permissive subjects of negotiations.

The Supreme Court has interpreted "wages, hours, and other terms and conditions of employment" to include the following:

> It is important to note that the words of the statute [conditions of employment] are words of limitation. The National Labor Relations Act does not say that the employer and employees are bound to confer on any subject which interests either of them; the specification of wages, hours and other terms and conditions of employment defines a limited category of issues subject to compulsory bargaining . . . .
>
> In common parlance, the conditions of a person's employment are most obviously the various physical dimensions of his working environment. What one's hours are to be, what amount of work is expected during those hours, what periods of relief are available, what safety practices are observed, would all seem conditions of one's employment . . . . Thus, freedom from discriminatory discharge, seniority rights, the imposition of a compulsory retirement age, have been recognized as subjects upon which an employer must bargain . . . . [Fibreboard Paper Products Corporation v. NLRB, 379 U.S. 203, 240-5 (1964). Concurring opinion of J. Stewart.]

Most states have followed this expansive federal definition and included a large number of items within the scope of negotiation (Naples and Bress, 1975, pp. 229-231). However, some states have placed specific limitations on the scope of negotiation as in Hawaii where the parties are prohibited from bargaining on any subject which would interfere with the principles of the merit system, interfere with the employer's right to determine the qualifications and standards for hiring and firing of employees, relieve employees of their duties, or interfere with the employer's ability to efficiently carry out the mission of the institution (Lau and Mortimer, 1976, p. 65). In New York, the Office of Employee Relations has held that certain management prerogatives and issues related to academic governance are not permissive subjects for negotiation. In Pennsylvania, the statutory language is very vague, but the parties have voluntarily limited the scope of negotiation as part of the contract by providing that certain management prerogatives and the topics within the jurisdiction of the Campus Curriculum Committees are outside of the scope of issues to be covered in future negotiations (Johnson and Gershenfeld, 1976, p. 51).

In California, the state of the law with regard to the scope of representation is unsettled. Both EERA and HEERA set forth a general definition of scope similar to that under NLRA and then list specific topics which are or are not to be negotiated (see Appendix A).

Under EERA, the scope provisions are contained in Section 3543.2. This section contains a general definition of scope as "wages, hours of employment, and other terms and conditions of employment" and then goes on to list a number of items which are specifically defined as being within the scope of negotiations such as health and welfare benefits, transfer and reassignment policies, safety conditions, class size, evaluation procedures, lay-off procedures, and other items. Section 3543.2 was amended by AB 777 (c. 100 Stats. 1981) and AB 61 (c. 1093 Stats. 1981) to permit the parties to alter the terms of lay-off and disciplinary procedures specified in other portions of the Education Code. In addition to these items which are defined to be within the scope of negotiations, Section 3543.2 also indicates that other matters relating to educational objectives, curriculum, and text book selection may be subject to consultation with the exclusive representative of certificated employees.

Determining the exact scope of negotiations under EERA is difficult because Section 3543.2 contains conflicting language relating to how strictly its terms are to be interpreted. On the one hand, the section indicates that the scope of negotiations shall "be limited to matters related to wages, hours of employment, and other terms and conditions of employment" which suggests an expansive interpretation of scope because of the phrase "related to." On the other hand, the end of Section 3543.2 states that all matters not specifically defined to be within the scope of negotiations are reserved to the employer and may not be the subject of negotiations. In the San Mateo Case [PERB Decision No. 129 1980)], the Public Employment Relations Board set forth a balancing test to determine the interpretation of Section 3543.2. Under the San Mateo test, if an issue is "logically and reasonably" related to the defined scope of negotiation, the board will balance the likelihood that the mediating influence of collective bargaining will reduce conflict against the need of the employer to exercise its prerogatives in the achieve-

ment of the mission of the district. In Jefferson [PERB Decision No. 132 1980)] and Healdsburg [PERB Decision No. 133 (1980)], PERB applied the San Mateo test to broadly interpret Section 3543.2 and include a wide variety of issues within the scope of negotiations. However, the parties appealed the PERB decisions, and the First District Court of Appeals handed down its decision in two of the cases, San Mateo and Healdsburg, in December of 1981. The Court of Appeals reversed PERB on 10 of 14 scope issues and rejected the balancing test established by PERB in San Mateo (1 Civ. 49913, 1 Civ. 50191, and 1 Civ. 50199, December 22, 1981). The Jefferson Case (1 Civ. 50241 and 1 Civ. 50225) is still pending with the Court of Appeals, and San Mateo and Healdsburg have been appealed to the California Supreme Court which has agreed to hear the cases (SF-24401 Cert. Granted, February 27, 1982). PERB has rendered

other decisions on scope which are not currently before the Courts such as Fullerton Union High School District [PERB Decision No. 53 (1978)] relating to counselor workload and Anaheim Union High School District [PERB Decision No. 177 (1981)], which held release time within scope of negotiations. However, even these decisions will probably be affected by the results of the San Mateo, Healdsburg, and Jefferson decisions because of their fundamental impact on the interpretation of Section 3543.2.

Under HEERA, special efforts were made to ensure that the roles of the Academic Senates at the University and State University are preserved and that issues normally within the jurisdiction of those bodies are excluded from the scope of negotiation unless the administration or the Senate itself removes an item from the Senate's jurisdiction. Moreover, provisions related to the University of California attempt to ensure that bargaining will be limited to issues of local importance until such time as a systemwide faculty bargaining agent is elected pursuant to the provisions of Section 3579. However, since bargaining has not begun on a significant scale at either the University or the State University, it is difficult to ascertain how these definitions of scope will be applied in practice.

IMPASSE RESOLUTION

Impasse resolution refers to the process provided by the collective bargaining statute for reaching agreement on resolving issues over which the parties to the bargaining process cannot voluntarily agree. This should be distinguished from the process which may be provided in the negotiated contract for resolving individual employee grievances.

An impasse occurs when either party refuses to change its position or to bargain further over a mandatory subject of negotiation and the other party declares that further negotiations would be fruitless. Most collective bargaining statutes provide that when one party declares an impasse, the administering agency shall appoint a mediator to assist the parties in resolving their differences. Often the statutes further provide that if mediation is unsuccessful, either party may request that a fact-finding panel be appointed. The fact-finding panel assesses the circumstances of the negotiation, considers the offers made by both sides, and prepares a report recommending a settlement. The fact-finding report is only a recommendation, but because it can be made public, the parties may be inclined to accept its terms to avoid adverse publicity. However, it is also possible that the parties may

remain unnecessarily recalcitrant during negotiations on the theory that the fact-finding panel is likely to simply split the difference between their demands.

The NLRA and virtually every state statute include provisions for mediation, and approximately two-thirds of the states provide for voluntary arbitration or fact-finding. A few states such as Wisconsin and Connecticut provide for compulsory arbitration in which either party may require a disputed issue to go to arbitration. In Iowa, the results of the arbitration process will become binding at the request of either party. EERA and HEERA both provide for mediation and a voluntary arbitration or fact-finding.

The primary question with regard to impasse resolution is how to handle situations in which mediation and fact finding are unsuccessful. Fortunately, this is not a prevalent problem since the vast majority of cases are solved during the mediation phase, and in a sizable percentage of cases where fact finding is requested, a settlement is reached before the report is ever issued (44 CPER, p. 31). Under the NLRA, two additional techniques are available to bring a final resolution to the bargaining process. First, employee organizations are allowed to strike if the employer has committed an unfair labor practice [NLRB vs McKaye Radio and Telegraph, 304 U.S. 333 (1938)]. Second, bargaining may continue after the impasse procedures have been exhausted and the employer may ultimately terminate the process by taking a unilateral action, but any such action is restricted to the "last best offer" made by the employer during bargaining.

A number of states including Hawaii, Alaska, and Pennsylvania permit some limited right to strike. New Jersey does not allow strikes at all, while other states such as Michigan and Wisconsin have a prohibition against strikes but do not actively enforce it (Education Commission of the States, 1976, p. 98). In California, Labor Code Section 923 gives employees in private industry the right to strike, but it has long been held that this section does not apply to public employees [Pasadena City Schools vs. Pasadena Federation of Teachers, 72 Cal. App. 3rd 100, 105-107, 140 Cal. Rptr. 41 (1977)]. However, the California Supreme Court has recently cast some doubt on the proposition that public employees do not have a right to strike. In the San Diego Teachers Association Case, it held that an employee organization must exhaust the administrative impasse procedures provided under EERA before it may strike [24 Cal. 3d 1 (1979)]. The Court specifically refused to rule on the question of whether strikes were legal for public employees, but it indicated that the PERB might reasonably find a strike to be a protected activity if it occurred in response to bad faith on the part of the employer and appeared to be a constructive effort toward resolving an impasse. The PERB has interpreted the

San Diego decision as authorizing a strike after impasse had been reached in the Modesto Case and even before impasse occurred in the Fremont Case [PERB Decision No. 136 (1980)]. But the ultimate question of the legality of strikes for public employees will have to await resolution by the California Supreme Court when an appropriate case is before it.

CHAPTER THREE

THE IMPACT OF COLLECTIVE BARGAINING ON POSTSECONDARY EDUCATION

OVERVIEW

This chapter reviews and summarizes research findings regarding the impact of collective bargaining on seven broad areas of academic life that hold particular interest to the educational community and state policy makers. Assessing the impact of faculty collective bargaining on postsecondary education has been a subject of the most intense interest for state policy makers, institutional administrators, faculty members, and students since its advent in the late '60s. In addition to the natural curiosity aroused by any new element in the academic environment, collective bargaining attracted attention because it had developed in the industrial sector and thus seemed alien to the traditions of higher education. As a result, much of the early writing about it conveyed a gloomy "the sky is falling" message. A more balanced discussion was illustrated by the Commission in its 1975 statement (pp. 2-3):

> At its best, the campus is a community characterized by a mutual regard and respect, a shared commitment to the growth and well-being of all its members and to the importance of scholarship and individual competence. The essence of the bargaining procedure is the formalizing of adversary relationships. While an adversary relationship need not be hostile, it is conceivable that a campus may come to be fragmented into a welter of organized interest groups. The worst that might follow from such a development is a diversion of attention from learning to a perpetual wrangling over the negotiation and interpretation of the terms of the respective contracts.
>
> The best that could come of the a well-defined and regulated bargaining process is clear, orderly determination of salary and personnel matters, allowing academic policy questions to be decided in a spirit of unimpeded collegiality.
>
> To a greater extent than in most organization structures, the lines of authority on college campuses have been based on tacit understanding, trust, and good faith. If these qualities have deteriorated or were never notably present on a campus, bargaining may be a salutary means

> of ordering relationships and clearing the air. At the other pole, however, there lurks the suspicion that the closer campus relationships come to be patterned on a factory model, to that extent the learning environment may be impaired.

Early research on the impact of faculty bargaining was largely confined to case studies of particular institutions. Later research took several divergent forms. One involved reviewing and analyzing the contracts signed at various institutions. A second indirectly assessed the impact of collective bargaining by analyzing the opinions of participants and nonparticipants in the bargaining process. A third compared the characteristics of groups of unionized and nonunionized institutions (such as their compensation levels) to determine whether consistent and statistically significant differences could be found between them.

Each of these approaches has advantages and disadvantages. Case study information was of limited use outside the particular context described, but, on the other hand, the other research techniques tended to aggregate information at such a high level that critical differences between individual institutions were masked. The analysis of contracts has been hampered by the fact that the same issues are handled very differently in different contracts, and it has provided little information about the effects either of the bargaining process or of its subsequent implementation. Opinion surveys have yielded a great deal of useful information about the attitudes of participants regarding the impact of collective bargaining, but these perceptions are influenced by the different perspectives of parties to an adversary process. Analyses of institutional characteristics seem to offer the best hope of providing objective conclusions about the impact of collective bargaining, but they can be used in addressing only a few specific questions and they have been somewhat inconclusive. Despite these very real problems, a review of research based on all these techniques yields a consistent albeit somewhat general picture of the impact of collective bargaining on postsecondary education.

PRINCIPAL STUDIES

In the development of this report, several major studies of the impact of collective bargaining were reviewed. Two primary studies examined its effect on compensation. The first was conducted by Robert Birnbaum (1977) during the early 1970s. Birnbaum selected 20 comparable pairs of unionized and non-unionized community colleges and 35 pairs of public four-year institutions that had identical compensation levels in 1968-69. He then monitored salary levels in subsequent years to determine if any statistically significant divergence between the two groups' compensation occurred.

A second study conducted by William Brown and Courtenay Stone (1977) compared salary levels at several pairs of unionized and non-unionized four-year institutions which were matched for size, geographic location, and other characteristics. The major differences between these studies were that Brown and Stone attempted to account for regional variations in salary patterns and they compared salaries only after an institution had entered into a contract while Birnbaum disregarded the initiation of the contract and looked at aggregate differences after several years. These methodological differences probably account for much of the discrepancy in their findings which are discussed below.

Regarding the impact of collective bargaining on academic governance, a great deal of literature exists. Much consists of case studies of individual institutions or analysis based on the personal experiences of the author as a participant in collective bargaining. One important study of this type was conducted by Joseph Garbarino and Bill Aussieker, whose 1975 book, Collective Bargaining: Change and Conflict, provides an excellent summary of the experiences of several major public institutions and state systems which had entered into collective bargaining by that time. Another useful report by Kenneth Mortimer and associates was published in 1976 by the Education Commission of the States. It gives detailed information about the development of collective bargaining in eight key states and draws general conclusions based on the experiences of these states.

Later research on the impact of collective bargaining on governance was somewhat more objective. In 1978, Barbara Lee published a report summarizing findings based on content analysis of the contracts at unionized public and private four-year institutions. Lienemann and Bullis (1980) conducted a study of collective bargaining at public universities in four states which relied on surveying participants in the bargaining process and soliciting their opinions about what changes collective bargaining had produced in the governance structure at their institution. Baldridge and Kemerer conducted similar surveys of faculty and administrators throughout the country at unionized and non-unionized public and independent institutions of all types in 1974 and 1979. Their 1981 report reviews the results of these surveys and compares them to determine whether opinions had changed significantly over the five-year period.

COMPENSATION

Obviously, any union, whether of auto workers or college professors, has as a principal objective the improvement of compensation levels for its members. The research thus far on the impact of faculty bargaining on this goal shows some modest initial success but a subsequent erosion of gains.

In studying this impact, comparisons of salary levels before and after the initiation of collective bargaining at a particular campus are essentially meaningless because they say nothing about the increases that might have occurred without the existence of collective bargaining. To avoid this difficulty, Robert Birnbaum and other researchers have studied changes in salary levels at matched pairs of unionized and nonunionized institutions. Birnbaum (1977) identified institutions with similar characteristics and identical compensation levels in 1968-69 and then studied whether salary levels diverged in later years between the unionized and the nonunionized groups. He found that the unionized institutions had made modest gains over the nonunionized institutions between 1968-69 and 1972-73, but these advantages had begun to erode by 1975-76 among four-year colleges and universities, and they had disappeared altogether among two-year institutions.

Another study by Brown and Stone (1977) compared increases in compensation levels for a group of institutions with signed agreements to average compensation levels nationally on a year-to-year basis between 1970-71 and 1975-76 but found no significant difference between the two groups. Although their conclusions differed from Birnbaum's, it appears that much of the discrepancy was due to differing comparison bases and methodologies. After reanalyzing his data in the light of their findings, Birnbaum (1977, pp. 69-70) determined that the most substantial increases in compensation occur before the initial contract is signed, that increases thereafter are modest, and that the gains tend to erode over time. Reviewing these and several other similar studies, Baldridge and Kemerer concluded that economic gains associated with collective bargaining are real although modest and seem to be diminishing as economic conditions worsen (1981, p. 46).

A related question that has been extensively studied is whether compensation levels for junior and senior faculty are narrowed by collective bargaining. This "equalization" or "leveling" (depending on one's point of view) has been a widely anticipated result of faculty collective bargaining. However, the available research seems to indicate that it has not occurred (Garbarino, 1975, pp. 172-173; Baldridge and Kemerer, 1981, p. 25).

Regarding the effect of collective bargaining on salary differentials between two-year and four-year institutions, the evidence clearly indicates that community colleges have been closing the gap with senior institutions, particularly in states such as New York and Hawaii where both types of institution are included in the same bargaining unit (Garbarino, 1975, p. 174; Ladd and Lipset, 1973, p. 70). There are other factors, however, which may have contributed to these results in Hawaii and New York, especially the fiscal crisis faced by CUNY.

Against the gains in compensation associated with collective bargaining must be balanced the need for faculty to pay union dues and, according to Baldridge and Kemerer (1981, p. 7), reduced travel and research budgets and other reductions in the quality of working conditions which have occurred at some institutions. Moreover, it should be noted that at best the research shows a correlation and not a causal relationship between the existence of collective bargaining and reductions in compensation differentials (Birnbaum, 1977, p. 64). Nonetheless, most observers seem to agree that faculty compensation would presently be lower without the existence of collective bargaining.

Recent declines in America's economic situation may partly explain why faculty compensation increases were largest in the early '70s and have steadily diminished since then. It may also be that the initial gains in compensation due to collective bargaining have disappeared as management has become more familiar with the bargaining process and has toughened its negotiating stand. Birnbaum's findings that most compensation gains occur prior to the signing of the first contract may be evidence of efforts by administrators to forestall the advent of bargaining or to soften the impact of contract negotiations. A similar effect may cause nonunionized institutions to raise salaries in an effort to prevent unionization and thus distort the results of research studies which find smaller differences than would have otherwise been the case. But whatever the reasons, it appears that the impact of collective bargaining on faculty compensation is modest at best and will likely be less significant in the future if current trends continue.

INSTITUTIONAL GOVERNANCE

Of all the issues raised by the advent of collective bargaining in higher education, none has attracted more attention or produced more heated debate than the question of its impact on institutional governance. The central problem is the tension discussed earlier between concepts of collegiality which form the basis for traditional academic governance and the essentially adversarial nature of the collective bargaining process. Thus assessing the impact of collective bargaining on academic governance is, in large measure at least, a question of determining the degree to which the tension between collegiality and collective bargaining has resulted in the degradation of collegiality.

Undertaking such an analysis presupposes understanding the extent to which collegiality actually exists in academic governance. Unfortunately there is little consensus on this point. In the

Yeshiva decision, the United States Supreme Court describes its view of academic governance by saying:

> This system of shared authority evolved from a medieval model of collegial decision making in which guilds of scholars were responsible unto themselves . . . Although faculties had been subject to external control in the United States since colonial times, traditions of collegiality continue to play a significant role at many universities including Yeshiva. [440 U.S. 672, 680 (1980) (citations omitted)]

A different view has been expressed by Samuel Wakshull, president of the United University Professions, the AFT affiliate representing faculty at the State University of New York, who stated bluntly, "What collegiality is in short is a myth . . . . In this country, from the very beginning institutions of higher education have always been subject to outside, lay control; and the classical collegiality has simply not existed, nor does it today" (1978, p. 30).

In reality, collegiality is neither universal nor nonexistent, but rather exists in varying degrees among institutions. It is generally agreed that faculty participation in governance is highest at research-oriented universities, somewhat less influential at the state colleges, and least extensive at the community colleges. Similarly, in any institution, collegial governance mechanisms may be fairly effective at the departmental level but weak or nonexistent at the campuswide level (Schwartz, 1980). Accordingly, the remainder of this section examines, first, general findings regarding the impact of bargaining on goverance, then those involving departmental governance, and finally those affecting campuswide or systemwide governance.

General Findings

At least eight findings involve the impact of collective bargaining on institutional governance in general.

- Faculty collective bargaining tends to reinforce the existing trend toward greater centralization of institutional decision making. It is widely recognized that collective bargaining is associated with increased centralization of decision making (Steiner, 1978, p. 25), but evidence also exists, as noted in Chapter Two, that the trend toward centralization in higher education is occurring independently of collective bargaining and may in some instances cause the unionization of faculty

(Garbarino, 1975, p. 151). Certainly a number of pressures contribute to this trend toward centralized governance, such as increasing state intervention and the need for greater efficiency, apart from any influence exerted by collective bargaining (Baldridge and Kemerer, 1981, p 10). The most accurate characterization of the relationship is that collective bargaining is caused by and reinforces a pre-existing trend toward centralization. In particular, it appears that the higher the level of authority designated as the employer, the broader the scope of bargainable issues, and the larger the bargaining unit, the greater will be the tendency toward centralization (Weinberg, 1976, p. 105)

- Relations between the parties in the governance process have been formalized and bureaucratized by collective bargaining. Many participants report a reduced sense of community on unionized campuses (Lienemann and Bullis, 1980, pp. 9-10), and while collective bargaining by itself may not be the sole cause of increased formalization, it does contribute to this tendency (Garbarino, 1975, p. 155). Although formalism and loss of community generally have negative connotations, structuring and clarifying poorly defined procedures can be advantageous because, as Garbarino says, "one man's loss of flexibility in discrimination and decision making is another man's limitation of arbitrary authority" (ibid.).

- Despite early speculation that the egalitarian tendencies of unions would reduce differences in influence as well as compensation between part-time and full-time faculty and between junior and senior faculty, there has been little alteration in the relative status of part-time and junior faculty members (Baldridge and Kemerer, 1981, p. 25). The City University of New York and the University of Hawaii are exceptions to this generalization, however, because the faculty of their two-year institutions did receive considerable benefit from being combined into bargaining units with faculty of four-year institutions. Baldridge and Kemerer concluded that unions may have failed to achieve status equalization because senior faculty members are becoming more involved in unions and have moved through them to protect their favored status.

- The development of collective bargaining appears to be inversely related to the extent of faculty participation in academic governance. Thus collective bargaining is nearly universal at the two-year schools where academic governance has been weakest, fairly strong at state colleges where academic governance has been a relatively new phenomenon, and very rare at the research-oriented universities where faculty governance has been strongest (Kleingartner, 1981; Weinberg, 1976, p. 103). This situation may be due to the fact that faculty participate least in govern-

ance in centralized systems where collective bargaining is most likely to develop. Garbarino has suggested as another possibility that faculty collective bargaining may be less a response to the lack of participation in governance than it is to a difference between the actual level of participation and that which faculty expect on a particular campus (1975, p. 71).

- At two-year colleges, faculty have often entered into collective bargaining in order to match salary increases achieved by teachers in the public schools and to eliminate the salary and status differences which have traditionally separated them from their colleagues at four-year institutions. In these institutions, collective bargaining has often assisted faculty in gaining a meaningful voice in institutional governance (Lee, 1978, p. 26) By contrast, at four-year institutions, collective bargaining has often been used as a defensive mechanism to protect faculty salaries and status from the encroachment of the two-year faculty or other public employees (Baldridge and Kemerer, 1981, p. 22). Thus while unions have occasionally replaced academic senates or other traditional governance mechanisms, as in Florida and Minnesota, collective bargaining has generally been a conservative force at four-year institutions and has usually resulted in the preservation of existing faculty governance structures (Lee, 1978, p. 52).

- Relations between unions and faculty senates have generally stabilized at most unionized institutions, and "dual-track" governance--divided authority between the union and the senate--has worked reasonably well (Baldridge and Kemerer, 1981, p. 9). Under dual-track governance, the union generally has authority over issues involving compensation, working conditions, and processing of individual grievances, while traditional academic governance mechanisms retain decisions about curriculum, student admission requirements, and other matters of educational policy. Many writers had anticipated that the natural tendency of labor boards and unions to extend the scope of bargainable issues, as well as the inherent tension between unionism and traditional governance structures would eventually destabilize dual-track arrangements, resulting in union dominance in all areas of decision making (Feller and Finkin, 1977, p. 80; Wollett, 1975, p. 49). But at least to date, it appears that legal restrictions on the scope of bargaining and the naturally conservative tendencies of faculty have protected dual-track governance from this kind of instability.

- While collective bargaining has not exerted a substantial influence on governance mechanisms within institutions, it has given political power to the faculty in state legislatures and the external political arena (Baldridge and Kemerer, 1981, p. 7).

Unions have sought this kind of influence in order to equalize what they perceive to be the existing imbalance in decision making authority within institutions which favors the administration (Wakshull, 1978, p. 32). Perhaps the most dramatic example of how this political muscle of unions can affect institutional governance has occurred in New Jersey where the conservative stance on bargaining issues of a Republican state administration resulted in AFT victories in representation elections, and the support of the AFT in turn resulted in the election of "a pro-union" Democratic governor who gave orders that cooperation with the union was expected (Begin, 1976, p. 25). Ironically, this increased politicization of the relationship between faculty and administration tends to reinforce the tendency toward centralization of authority (Weinberg, 1976, p. 102), which was one of the primary forces faculty sought to resist by entering into collective bargaining.

- In summary, collective bargaining seems to have had only relatively modest impact on traditional academic governance (Baldridge and Kemerer, 1981, p. 6). At some institutions, it has helped establish governance mechanisms where they had not existed; in some rare instances, unions have usurped the functions of faculty senates; and a number of institutions have undergone minor redistributions of authority within their overall governance structure. But the net effect of these changes to date has been very marginal.

Governance at the Department Level

While collegiality and faculty participation in governance may be weak or illusory at many institutions on the campus level, they are very real and significant at the department level (Shwartz, 1980). This is the level where decisions are made about course offerings, course content, grading policies, and other matters affecting the day-to-day operation of academic institutions. In large public systems of higher education, department faculty, department chairs, and deans have lost some influence and autonomy since the advent of collective bargaining (Lienemann and Bullis, 1980, pp. 15-16); but this loss may be due to budgetary constraints and increased centralization which is naturally present in such systems (Lee, 1978, p. 30). Nevertheless, regarding those decisions remaining within the sphere of departmental authority, collegiality is still prevalent. It has not been significantly impaired by collective bargaining, since departmental-level decisions are typically beyond the legal reach and natural interest of unions (Baldridge and Kemerer, 1981, p. 9; Lee, 1978, p. 29).

Perhaps the most significant alteration of governance mechanisms at the departmental level is the changing role of department chairs. Department chairs have been pivotal in traditional governance systems, serving both as the first level of management and as the representative of the department faculty. For this reason, their status has been a significant source of conflict in the development and implementation of collective bargaining. The prevailing view today seems to be that department chairs should be included in the bargaining unit as has been done under HEERA in California. While this has given department chairs the opportunity to participate in collective bargaining with employers, it has meant that they have been stripped of virtually all management authority and have lost influence over many decisions which were previously within their domain (Lee, 1978, p. 45).

Campuswide or Institutional Governance

Available research suggests that the effect of collective bargaining on governance at the campuswide or institutional level depends largely on such other factors as the attitude of the parties involved, the length of time collective bargaining has been in effect, the degree of success of traditional governance mechanisms, and whether or not the institution is part of a large system.

Attitudes: Probably the most obvious of these factors is that of attitude. Authorities on faculty bargaining generally agree that when administrators adopt a cooperative attitude, the union will reciprocate (Lee, 1978, p. 58). If both parties to the bargaining process decide that it is to their mutual benefit to preserve institutional autonomy, collegiality, and informal decision making, they are able to do so. This cooperative approach was adopted at Rutgers, for example, where the administration welcomed unionization as a method of helping faculty resist external influences which threatened institutional autonomy, and where the faculty as well as the administration sought to maintain collegiality through the bargaining process (Begin, 1976, pp. 27-30). This cooperative approach to coping with bargaining seems to be fairly common (Garbarino, 1975, pp. 143-144).

Time: As was noted in the area of compensation, the impact of collective bargaining on institutional governance seems to vary with time, probably because the parties need a period to adjust to the requirements of the bargaining process. Thus, after surveying faculty members and administrators at both unionized and nonunionized institutions about the impact of collective bargaining, Baldridge and Kemerer concluded that unions seem to have an early negotiating advantage because their bargaining teams are typically better trained than administrators who may initially be unfamiliar

with the bargaining process. However, as time goes on, administrators feel less threatened by bargaining and begin to take a tougher stance on bargaining issues, while senior faculty, who may initially refrain from involvement in union activities, get more involved later on. (For more thorough discussion of these results, see Baldridge and Kemerer, 1981, pp. 8, 18, 21, and 25.) This effect may not be universal, but in general collective bargaining may result initially in an alteration in power relationships, but changes over time tend to reestablish the original balance of power.*

Success of Existing Governance Mechanisms: As noted earlier, the degree of faculty participation and success with traditional academic governance relates inversely to the likelihood that collective bargaining will develop at an institution (Weinberg, 1976, p. 103). At institutions with weak faculty governance mechanisms, unions often attempt to strengthen them as part of the provisions of collective bargaining agreements (Lee, 1978, p. 52). As a result, the scope of authority of campus administrators may be decreased (Kemerer and Baldridge, 1981, p. 14). But formalizing these relationships in a contract may in some instances actually benefit administrators because it clarifies which decisions are left within their exclusive jurisdiction (Baldridge and Kemerer, 1981, p. 13). In addition, once administrators become familiar with the bargaining process, they may begin to use it to their advantage. Thus in a study of the reactions of campus presidents to collective bargaining at nine Illinois community colleges, Kerchner found that presidents had begun to withhold management prerogatives in order to use them as tradeoffs in bargaining and had often succeeded in using the bargaining process to achieve their own objectives (1977, p. 90).

Single Institution or Multicampus System: Finally, Lee has found that the campus administration may benefit from the bargaining process at single-campus institutions but almost always loses influence due to it in multicampus systems (1978, p. 44). This loss of campus autonomy in large centralized systems has been confirmed by

*In their review of collective bargaining arrangements in four systems of higher education, Lienemann and Bullis concluded that time was a significant factor only in Illinois (1980, p. 11). But their conclusion is not surprising since (1) they studied only time under contract and thus ignored changes which occurred before the contracts were signed, and (2) the political and practical problems involved in establishing collective bargaining in a large system require much time for resolution, permitting administrators to work on them prior to the beginning of negotiations.

the research of Mortimer and others (1976) and Lienemann and Bullis (1980), although the results vary from state to state, with campus administrators in some state systems such as Minnesota's seeming to gain authority as a result of collective bargaining. The areas in which campus administrations tend to lose the greatest authority are salary determination and workload assignment (Lienemann and Bullis, 1980, p. 17). Of course, campus administrations have felt the effects of the trend toward centralization and the loss of autonomy in systems of higher education even where collective bargaining does not exist, but the tendency seems to be accentuated by bargaining (Kemerer and Baldridge, 1981, p. 9).

Governance in Multicampus Systems

Multicampus systems of higher education, having increased in number dramatically over the past few decades, now play a significant role in the development of postsecondary policy in most states. For this reason, a great deal of study has been devoted to the impact of collective bargaining in these systems, and its results are therefore somewhat better understood in them than elsewhere. Among the findings are these:

- Not only are centralization and formalization of decision making most pronounced in these systems, collective bargaining seems to further these tendencies, particularly where a single systemwide faculty unit exists, where the scope of bargainable issues is broad, and where the governor or a state agency is designated as the employer (Weinberg, 1976, p. 105). In general, the more external authority the state gains through the collective bargaining process, the greater will be the degree of formalization and standardization of relationships between faculty and administration (Leslie, 1975, p. 47).

- Collective bargaining in multicampus systems politicizes academic decision making at the state level as well as within the institution (Baldridge and Kemerer, 1981, p. 17). This is most noticable when unions resort to "end runs" in circumventing the ordinary administrative decision-making processes within the institution by using their political influence in the state legislature (Duryea and Fisk, 1976, p. 43). Although decisions within the institution become more political, they may also become more open and democratic (Lienemann and Bullis, 1980, p. 10).

- Collective bargaining shifts power and decision-making authority beyond the multicampus system. This has been particularly evident in those states such as Hawaii, New Jersey, and New York which adopted collective bargaining, and where state executive

authorities gained considerable control over institutional decision-making and where local campus and departmental autonomy was generally eroded (Mortimer, 1976). To a lesser degree, it has been confirmed in other states that adopted collective bargaining later. For example, after interviewing faculty members and administrators in multicampus systems in four states, regarding shifts in decision-making power as a result of collective bargaining, Lienemann and Bullis developed the "power-shift matrix" depicted in Table 7 which reflects the relative influence of various decision makers in seven categories of decisions. The matrix shows that deans and department chairs lost authority in most areas, that systemwide administrators and systemwide bargaining agents gained the most, and that government agencies made at least slight gains in most areas. Lienemann and Bullis point out that the matrix masks some significant differences

*TABLE 7 Power Shifts by Decision-Making Level and Decision-Making Area, Comparison of Mean Scores**

Decision Type	Dept/ Fac	Chair	Fac/ Gov	Pres/ V.P.	Gov. Bd.	Agent	State/ Gov
Personnel	1.95	1.96	1.86	2.04	2.00	2.43	2.01
Salary Increase	1.86	1.76	1 89	1.73	1.98	2.76	2.15
Workload	2.03	1.96	1.93	1.93	2.00	2.35	2.04
Fund Allocation	1.84	1.97	1.92	2.09	2.10	2.17	2.10
Curriculum Policy	1.80	1.98	1.96	2.03	2.07	2.09	2.02
Program Evaluation	1.90	2.09	1.91	2.15	2.17	2.10	2.03
Goals	1.81	2.03	1.89	2.15	2.19	2.13	2.07
TOTAL[1]	13.33	13 76	13.33	14.10	14.60	16.03	14.37

1. The totals differ slightly from the sum of the parts because in the totals of a missing response on any one of the parts resulted in exclusion of the case in the total.

*Item scores below 2.00 indicate a loss in influence and scores above 2.00 indicate a gain.

Source: Lienemann and Bullis, 1980, pp. 14-15.

among the four states. In Minnesota, for example, where the collective bargaining statute was interpreted to require the elimination of academic senates, the shifts in authority were particularly dramatic (1980, p. 17).

EDUCATIONAL QUALITY

Suspicion has been widespread that the leveling principle associated with unionism will prove incompatible with the meritocratic principles of academe and the maintenance of high educational quality (California Postsecondary Education Commission, 1975, p. 4). There is some evidence that institutions of higher quality or renown are less likely to unionize than others (Garbarino, 1975, pp. 74-77). But rather than demonstrating that quality and unionism are incompatible, this evidence may prove merely that faculty at these institutions believe them to be incompatible.

One area where collective bargaining was thus expected to have a significant impact was in eliminating the "merit" pay or "star" system of rewarding faculty members differentially based on individual performance. However, in many states including Hawaii, the basis for faculty qualifications and merit pay are excluded from the scope of bargaining (Lau and Mortimer, 1976, p. 65). As was noted earlier, collective bargaining has not significantly reduced differences in compensation levels, and thus it probably has not had much impact on the principle of merit pay. While unions often seek to eliminate the merit system, they have rarely been successful in doing so (Baldridge and Kemerer, 1981, p. 41). In California, both the UPC and the CPA have expressed concerns about moves being made by the State University to adopt differential pay schedules designed to attract faculty to high demand specialties, such as engineering, but it remains to be seen what will become of this differential pay system once bargaining begins.

A second common concern has been that the scope of bargaining will be inexorably expanded to encompass such basic academic policy decisions as course offerings, degree requirements, grading standards, and admission policies--all of which directly affect the quality of education (California Postsecondary Education Commission, 1975, p. 6). In general, community colleges and those four-year colleges with less effective academic governance mechanisms have adopted contracts covering a broader range of topics than research-oriented universities, which have commonly voluntarily narrowed the scope of negotiations; but in general unions have not had much influence over questions of academic policy and have instead been

confined to negotiating on issues closely related to salaries and working conditions. Thus Baldridge and Kemerer, in surveying faculty and administrators in 1974 and again in 1979 about the relative influence of unions and academic senates on a variety of issues, found that unions and senates each had clearly defined spheres of authority--unions in the economic realm and senates in academic policy--and that the influence of each in its respective sphere had increased over the five-year period. Table 8 displays the results of this comparison.

TABLE 8 Opinions About Influences of Senates and Unions on Institution Issues, 1974 and 1979 (Mean Ratings on Five-Point Scale)

	Curriculum		Degree Requirements		Long-Range Planning		Admissions Policy		Faculty Promotion and Tenure Policies		Department Budgets		Faculty Hiring Policies		Faculty Working Conditions		Faculty Salaries and Fringe Benefits	
	1974	1979	1974	1979	1974	1979	1974	1979	1974	1979	1974	1979	1974	1979	1974	1979	1974	1979
Four-Year and Graduate Institutions																		
Presidents (n=59/43)[a]																		
Senates	4.2	4.3	3.9	4.1	3.2	3.4	2.9	3.0	3.1	2.7	1.9	1.5	2.5	2.0	2.2	1.7	1.5	1.4
Unions	1.7	1.6	1.5	1.4	1.9	1.9	1.3	1.2	2.9	3.2	1.6	1.4	2.3	2.5	2.8	3.5	4.1	4.7
Campus Union Chairpersons (n=56/48)[a]																		
Senates	3.8	4.0	3.7	3.7	2.6	3.2	2.5	2.6	2.7	2.3	1.5	1.6	1.8	2.0	1.6	1.7	1.3	1.2
Unions	1.8	1.7	1.5	1.6	2.4	2.3	1.4	1.3	3.7	3.7	1.4	1.5	2.7	2.9	3.7	3.8	4.7	4.5
Two-Year Institutions																		
Presidents (n=70/46)[a]																		
Senates	3.8	4.1	3.7	3.8	3.2	3.3	2.8	2.7	2.7	2.4	2.3	2.1	2.5	2.2	2.5	1.8	2.0	1.3
Unions	1.6	1.8	1.6	1.6	1.6	1.7	1.2	1.3	3.3	3.4	1.7	1.6	2.3	2.7	4.2	4.1	4.7	4.9
Campus Union Chairpersons (n=78/60)[a]																		
Senates	3.6	3.9	3.3	3.7	2.7	3.1	2.2	2.4	2.4	1.9	1.7	1.9	1.9	2.1	1.9	1.9	1.7	1.4
Unions	2.2	1.9	1.8	1.8	2.6	2.2	1.6	1.3	3.9	3.6	2.0	1.6	3.1	2.7	4.1	4.0	4.6	4.4

Numbers are mean ratings in response to the question, "How much influence does the faculty union and senate have on these issues at your institutions?"

1 = low influence, 5 = high influence. Only respondents at campuses having a collective bargaining contract prior to 1975 are included from the 1979 survey so as to approximate the 1974 group. [a]First number applies to 1974 survey, second number to 1979 survey.

Source: Baldridge, Kemerer, and Associates, 1981, p. 20.

In contrast to the assumption that unionism and quality are incompatible, it seems plausible that collective bargaining may actually improve the quality of education because faculty bargaining agents may negotiate for reduced class size and increased support for research. It might also be reasonably expected that negotiators for the administration would push for an increase in the number of hours faculty spend with students and for increased performance standards for the faculty. Every indication, however, is that collective bargaining has had no positive effect on any of these issues (Lienemann and Bullis, 1980, pp. 12-13).

As Garbarino (1975, p. 74) points out, quality is an extremely difficult characteristic to measure accurately. However, to the extent that the merit system, class size, faculty performance standards, or support for research may be regarded as measurements of quality, it appears that collective bargaining has had little effect on educational quality, either positive or negative.

BUDGETING AND PLANNING

The impact of collective bargaining on institutional planning and budgeting is a subject about which relatively little is known. As indicated earlier, collective bargaining seems to reinforce a trend toward centralization, formalization, and standardization in academic life, including a greater role for state agencies and system-wide administrators in the planning and budgeting process. Management techniques borrowed from business and industry such as the use of computerized management information systems have been adopted at many institutions, and management specialists are beginning to replace active academicians as administrators in some areas such as personnel management (Baldridge and Kemerer, 1981, p. 13). But most researchers conclude that these changes have resulted in more effective and efficient institutional management (Wollett, 1975, p. 50; Lee, 1978, p. 29).

Collective bargaining has also helped to create or improve certain processes for long-range planning (Duryea and Fisk, 1976, p. 42). Unions have succeeded in gaining faculty participation in long-range planning processes by expanding the scope of bargaining, particularly by including issues related to retrenchment which have a substantial impact on long-range planning (Lee, 1978, p. 41). Indeed, unionized institutions are more likely to have retrenchment policies, and such policies at these institutions tend to have more uniform and fair procedures (Baldridge and Kemerer, 1981, p. 44).

Collective bargaining can affect budgeting in several ways:

- First, institutions may lose some autonomy they once had in the area of budgeting. For example, Massachusetts had traditionally given its institutions money for cost-of-living adjustments, but after collective bargaining began, its governor and legislature made clear that any cost-of-living adjustments would have to be achieved through the bargaining process (Mortimer, 1976, p. 84).

- Second, the budgeting process may be affected in that, as in California and many other states, any item negotiated through the bargaining process that has cost implications must be approved by the governor or legislature before it can become effective. This means that the ordinary practice of computing cost-of-living increases as part of the regular budget process must be altered in favor of an ad hoc handling of such adjustments as they come up through the contract negotiation process. However as a practical matter, the change may be more apparent than real in California because salary adjustments have traditionally been handled as a separate issue at the end of the budgeting process, and this is likely to continue under collective bargaining. This problem might increase if legislatures do not approve contract settlements, but the practice of including representatives of finance agencies and legislative budget committees in the negotiations or at least informing them of the progress of negotiations is designed to alleviate if not avoid this situation.

- Third, negotiated changes in compensation levels obviously affect the overall budget of institutions, but as discussed earlier, compensation increases due to collective bargaining appear to be moderate at best. Thus this effect may in practice be relatively insignificant.

- Fourth and finally, collective bargaining affects the budget through the actual cost of conducting negotiations. It is difficult to assess the cost of the bargaining process accurately and relatively little research has been done on it, but one researcher has concluded that the average cost of preparing for bargaining, conducting negotiations, and administering the contract at a "moderate size" university would range between $140,000 and $250,000 a year (Bucklew, 1977). In a study of costs in 275 public school districts in California in 1977, Kerchner found that the mean cost per district was approximately $45,000, of which $17,000 was direct costs such as those associated with strikes and retaining legal counsel and another $28,000 was indirect costs due to reassignment of administrators and other internal changes (41 CPER 16). Of course, the Kerchner study is not directly applicable to postsecondary institutions, particularly since strikes are significantly more prevalent in

the schools than in higher education and add considerably to their bargaining costs. However, in light of Bucklew's cost analysis for a medium-size university and the generally higher costs of all administrative functions in the postsecondary sector, it is unlikely that average costs would be significantly lower in colleges and universities. (It should be noted that these studies do not attempt to compare the costs of labor management relations under collective bargaining with those in nonunionized settings. Although it is reasonable to expect that the costs are somewhat higher in unionized institutions, no evidence seems to exist as to the differential.)

In California, complete information is not available about expenditures for handling collective bargaining. Community College districts are allowed to claim reimbursement for the costs imposed on them by the EERA under SB 90 which permits local agencies to recover state-mandated costs. A review of the SB 90 claims approved for collective bargaining expenses by all Community College districts during 1980-81 reveals that the 15 districts which filed claims spent a total of $164,845. Table 9 displays this district-by-district information. For the senior segments, the 1981-82 Budget Act includes $786,831 for administrative costs involved in collec-

TABLE 9 Community College District Claims for Collective Bargaining Expenses, 1980-81

Grossmont	$ 8,663
Kern	7,086
Los Angeles	23,377
Napa	3,003
Santa Clarita	16,375
Redwoods	612
Citrus	20,848
Monterey	2,815
Mount San Antonio	50,276
Pasadena	5,696
Rio Hondo	4,683
San Francisco	10,592
Shasta	2,809
South County	1,039
West Hills	6,971
Total	$164,845

Source: SB 171 (1981).

tive bargaining at the California State University and $511,600 for this same function at the University of California. However, these budgeted figures do not reflect either the actual costs of administering the collective bargaining process or the indirect costs incurred by the institution through reassignment of personnel and other similar activities. Moreover, they do not cover the cost of the collective bargaining process for the unions or the Public Employment Relations Board.

TUITION AND OTHER STUDENT CONCERNS

The collective bargaining process could conceivably affect student interests regarding class size, grading practices, the balance between research and teaching, and other educational issues if the scope of negotiations were broadly defined (Brouder, 1976, p. 49). Students may oppose higher pay and greater job security for faculty (basic objectives of most faculty unions), particularly if they perceive the overall quality of faculty to be substandard (Ladd and Lipset, 1973, pp. 89-93). But most critically, students have feared that collective bargaining will result in higher tuition and fees, disruption of the educational process through strikes, and reduction of their influence in institutional governance (Shark, 1974, p. 102).

Earlier, this chapter indicated that collective bargaining has not significantly affected educational quality one way or the other in areas such as class size and the balance between teaching and research. Considerable evidence exists, however, that students have lost influence in institutional governance at unionized institutions, but this may be due more to student indifference than to the direct effects of collective bargaining (Lee, 1978, p. 43). Baldridge and Kemerer note some instances of tuition and fee increases related to collective bargaining (1981, p. 32); but, in light of the marginal impact of collective bargaining on faculty compensation, such increases are likely to be relatively small and infrequent if they are truly based on the results of the implementation of collective bargaining.

In order to protect their interests, students have sought the right to participate as observers and advisors in the negotiating process. In several states including California, they have succeeded in incorporating such provisions in enabling statutes over the strenuous objections of faculty organizations. Most union leaders and scholars who have addressed the question seem to be of the opinion that student interests should be represented through informal methods of communication with faculty and administration. Thus

Garbarino says, "it would be a serious mistake to give these arrangements formal status in law and thereby encourage the growth of formal student representation and negotiation" (1977, p. 35) Nonetheless, student participation in the bargaining process seems to have worked relatively well and has not significantly disrupted the process (Hjort, 1977; Brouder, 1976, p. 50). In some states, students have succeeded in including student participation rights in the terms of contracts, and they have had some impact on issues directly related to student fees and services (Lee, 1978, p. 43). There is even some evidence that students have had a positive effect on the negotiating process between faculty and administration (Brouder, 1976, p. 51). But in general, there is insufficient evidence to ascertain the effectiveness of student participation mechanisms. Ultimately, students are only observers and will probably have to rely on their demonstrated ability to wield political power in the state legislature to gain protection for their interests.

PERSONNEL PROCEDURES

Many faculty, administrators, and state policy makers have expressed concern over the possible impact of collective bargaining on tenure, lay-off procedures, and other personnel decisions. These concerns are largely based on the perception that concepts of the faculty as professionals will conflict with the underlying principles of unionism. The contrast between professionalism and unionism is aptly pointed out by Garbarino (1975, pp. 44-45) who states:

> The essence of professionalism is autonomy and self-regulation of the conditions under which the profession is carried on, in return for which the professional accepts a form of fiduciary responsibility toward his or her clients. The arrangements are based on the assumption that the members of the profession are the only competent judges of the qualifications and the performance of the practitioners. In particular, the client is assumed to be incapable of making informed judgments on these matters. Professional associations regulate the conditions under which services are performed in three major ways: control of supply of practitioners, control of work behavior, and control of overwork jurisdiction . . . The parallels with union apprenticeship regulations, union work rules, and union rules on work jurisdiction are obvious, but there is a vital difference. The traditional techniques of professionalism are not well designed for use by employed professionals. Professional associa-

> tions are organized to deal with conditions affecting an occupation as a whole and have not been concerned with many conditions important to a specific individual who works on a specific job for a specific employer.

Many faculty members at public institutions fear that state policy makers and legislators will ignore their professional status and will adopt the view expressed by one state official in New York who commented, "we never looked upon them, the faculty, as being anything other than state employees, paid from state funds, and in the state retirement system." Indeed, many faculty members may themselves have difficulty in adjusting to the new reality of more standardized and egalitarian personnel procedures which may result from collective bargaining. As Weinberg notes (1976, p. 105): "The research-oriented faculty . . . will find it difficult to swap the comfortable, tangible controls of an oligarchy for the uncertainties and hurly-burly of democracy grounded in collective bargaining."

All of the available evidence points to the fact that the most significant impact of collective bargaining on college and university campuses has been the formalization and standardization of personnel policies and procedures (Leslie, 1975, p. 46; Duryea and Fisk, 1976, p. 38; Lienemann and Bullis, 1980, p. 9; and Baldridge and Kemerer, 1981, p. 10). These procedures on unionized campuses are more elaborate than on other campuses and more nearly approximate the treatment afforded other public employee groups (Leslie, 1975, p. 47). However, other factors besides collective bargaining, such as civil rights litigation and a general tendency toward greater uniformity in public sector employment procedures, may have also contributed to the formalization and standardization of college and university personnel policies (Baldridge and Kemerer, 1981, p. 38; Leslie, 1975, p. 47). There have been occasional instances of state executive agencies exerting considerable influence in personnel matters (Lau and Mortimer, 1976, p. 74), and while this tendency has been noted in other areas to a lesser degree, it does not seem to have reduced the level of faculty participation in decisions on personnel issues (Lee, 1978, p. 38). Nor have researchers found any significant impairment of the peer review process, infringement on academic freedom, or reduction in the overall quality of faculty selections (ibid.).

One significant result of the formalization and standardization of personnel procedures has been that these decisions are now made more openly, are subject to greater scrutiny, and tend to be fairer (Steiner, 1978, p. 27). This is important because many faculty members have felt that decisions made through the traditional closed personnel system--including many made by other faculty members through collegial peer review--were often arbitrary and

capricious (Ladd and Lipset, 1973, p. 78). Indeed, the vast majority of grievances filed under collective bargaining agreements have involved allegedly improper decisions made by other faculty members rather than by administrators (Lee, 1978, p. 36).

The final sections of this chapter discuss the impact of collective bargaining on particular personnel issues, including tenure, layoff, grievances, and affirmative action.

Tenure

In academic institutions, tenure is not only a process for ensuring job securty; it is also regarded as a bulwark against interference with academic freedom and a mechanism for improving the quality of the faculty. In order to achieve this latter objective, tenure is traditionally provided on a discretionary basis only to those candidates who are judged as superior. While this selectivity may ensure academic excellence, it runs counter to the natural tendency of unions to support egalitarian personnel policies which provide job security for all members of the union on an equal basis. The depth of feeling in the debate over tenure is indicated by the comments of historian Page Smith in an open letter to his colleagues at the University of California concerning the dangers of allowing senior faculty to make tenure decisions on a discretionary basis about their junior colleagues:

> Higher education [has come to believe that] we could be saved by scholarship. If in your heart of hearts you could believe that, you could commit the most cruel and wicked acts with a spirit of transcendent self-rightousness. You could kill the spirits and ruin the careers of thousands of young teachers and bully and intimidate the rest. You could do this, safe in the knowledge that you were maintaining "standards," defending your own academic balliwick against mediocrity, even doing what was 'truly in the best interests' of the victim, meanwhile, of course, preserving the special privileges that you have euchred for yourself out of a compliant university . . . Each year we engage in the ritual murder of some of our colleagues in order to preserve our own privileges . . . . In order to do something cruel and inhumane we must of course believe that it is for the good of mankind . . . . ("Letters to My Colleagues," University Guardian, January 1973, p. 2, quoted in Ladd and Lipset, 1973, p. 76)

In addition to these philosophical concerns about tenure, many early critics of collective bargaining believed that unions would be likely to bargain away the rights of nontenured faculty or that

the institution of grievance procedures would eventually replace tenure as a mechanism for ensuring job security. But actual experience with collective bargaining has shown that unions have not seriously attempted to bargain away the rights of the nontenured faculty nor has tenure been eroded by the operation of the grievance process (Lee, 1978, pp. 32-33). Indeed, unions have often sought to extend tenure or other forms of job security short of tenure to nonteaching professionals and nontenure-track faculty (Garbarino, 1975, pp. 160-163).

Many faculty have also feared that the collective bargaining process would negotiate away tenure in order to make possible replacing highly paid senior faculty with new recruits in more popular disciplines (Garbarino, 1975, pp. 158-159). These fears have usually proven to be unfounded. In many instances such as in New Jersey and New York, employers deliberately exclude tenure and other related topics from the scope of bargaining if possible (Duryea and Fisk, 1976, p. 35; Begin, 1976, p. 24).

Thus, rather than spelling the end of academic tenure, collective bargaining has helped to establish tenure systems at many institutions which did not have them and has strengthened them where they may have been weak (Lee, 1978, p. 34). However, unions have found it very difficult to assist particular faculty members obtain tenure given the difficult economic circumstances faced by most colleges and universities (ibid.). In fact, Baldridge and Kemerer found that dismissal of tenured faculty members was actually more likely at unionized institutions, but they pointed out that institutions which face difficult fiscal conditions may be particularly susceptible to unionization and that this underlying fiscal instability rather than unionization itself may contribute to their higher dismissal rates (1981, p. 43).

Retrenchment or Lay-Off Procedures

As discussed above, unions have generally contributed to strengthening or creating policies to safeguard faculty interests during times of retrenchment, and retrenchment policies at unionized institutions tend to include more uniform lay-off procedures (Baldridge and Kemerer, 1981, p. 44). Unions have occasionally been able to delay retrenchment or reduce its magnitude, but in general unions have been unable to prevent it (Baldridge and Kemerer, 1981, p. 9). Despite this inability, collective bargaining may clarify and strucure the way in which retrenchment takes place.

Grievance Procedures

Traditionally, decisions about faculty appointments, promotion, and tenure have been made by collegial review panels in the strictest

secrecy. This system assumes that the academic peers of faculty members are the only ones competent to judge their qualifications and is designed to maintain quality in the profession (Lee, 1978, p. 30). The system has involved secrecy in order to ensure that the members of the review panel would express their candid opinions about candidates. Unfortunately from the perspective of the candidate, this system also meant that there was no possibility of appealing the decision of the collegial body which made these fundamental decisions about career advancement.

Collective bargaining has brought formal grievance procedures and often outside arbitrators into academic personnel processes. Grievance procedures may pose threats to the quality of the profession which peer review seeks to protect, and the use of outsiders may threaten academic freedom because outsiders are given a voice in determining the make-up of the faculty. In theory, most grievance procedures permit outside arbitrators to consider only questions of procedure and do not permit them to overturn academic decisions made by collegial bodies, but Lee has found that outsiders have gained some influence over faculty personnel decisions and that arbitrators have not always strictly observed the distinction between procedural and substantive decisions (1978, pp. 37-38). These problems may be reduced as arbitrators become more familiar with dealing with grievances arising from faculty personnel decisions, and both Lee and Baldridge and Kemerer (1981, p. 42) concluded that the involvement of outside arbitrators has not significantly impaired the peer review process or degraded the quality of faculty. Futhermore, it appears that although grievance procedures formalize the personnel process, they also make decision making quicker and fairer (Lee, 1978, p. 37).

Affirmative Action

Because of their emphasis on egalitarian principles, objective evaluation standards, and seniority as the bases for personnel decisions, unions have generally not aggressively pursued affirmative action for women and minorities. Retrenchment procedures included in negotiating agreements may require lay-offs by seniority, and this may be disadvantageous to women and minorities who tend to be the employees with least seniority. Unions have generally not taken an aggressive stance in the pursuit of grievances based on claims of discrimination against women and minorities (Wellman, 1980) And grievance procedures under the collective bargaining agreement and those established by the EEOC for handling discrimination complaints may conflict or be confusing to the parties (ibid.).

Collective bargaining statutes generally impose on the exclusive representative the obligation to fairly represent all members of

the bargaining unit. In theory, this obligation can be used as the basis for an unfair labor practice charge by members of a protected group who feel that the union has not adequately represented their interests. However, judicial interpretations have weakened this provision, and in practice it has not always served as an effective vehicle for enforcing the union's obligation to represent women and minority members of the bargaining unit (Wellman, 1980). In fact, in their survey of faculty and administrators, Baldridge and Kemerer found that unions have generally done little to assist affirmative action or to further the interests of women and minorities in the faculty (1981, p. 28).

CHAPTER FOUR

CONCLUDING OBSERVATIONS

Chapter Three has summarized what is known about the impact of collective bargaining on postsecondary education nationally, particularly in those states with extensive experience with faculty unions. It has not attempted to predict the impact that collective bargaining will have on California postsecondary education because the process is only now being initiated at the University and State University and knowledge about its results in the Community Colleges is limited Neither the Chancellor's Office of the Community Colleges, the Public Employment Relations Board, nor any other State agency has closely monitored the development of collective bargaining in the Community Colleges, probably because the Educational Employment Relations Act (EERA) does not specifically assign this responsibility to anyone. As a result, the Commission's analysis of collective bargaining in California has been restricted largely to a review of the enabling statutes. Both the EERA and the Higher Education Employer-Employee Relations Act (HEERA) draw heavily on the work of the National Labor Relations Board and administrative agencies in other states in applying collective bargaining to postsecondary education. Their provisions regarding scope, unit determination, and the status of managers and supervisors all reflect this influence. But HEERA includes several unique provisions, such as student participation, protection of academic governance, and the appointment of Legislative observers designed to overcome difficulties encountered in other states. These statutory adaptations contribute to the uncertainty as to whether the experiences of other states will be repeated in California.

Nonetheless, the findings included in previous chapters lead to several general conclusions about the impact of collective bargaining on postsecondary education:

- Taken as a whole, research on the effect of collective bargaining in colleges and universities seems to indicate that its results have been generally positive although relatively modest in magnitude Most researchers appear to hold that the status of the faculty at most unionized institutions would be worse if it had not been for the initiation of collective bargaining.

- Collective bargaining is part of an overall trend toward formalization, centralization, and equalization which is manifesting itself, independent of the influence of collective bargaining, in higher education, state government, and all aspects of our society. Collective bargaining is often adopted by faculty,

particularly at the four-year institutions, as a defensive maneuver to counteract this tendency. While the evidence is far from conclusive, it appears that collective bargaining has the ironic effect of reinforcing these very tendencies against which the faculty had hoped collective bargaining would protect them. Nevertheless, for faculty at any given institution to reject collective bargaining involves a calculated risk that allowing these trends toward centralization and formalization to proceed unchecked will have the same ultimate result as resisting them through the use of the bargaining process.

- The adoption of collective bargaining as the method for regulating the relationships between faculty and administration in postsecondary institutions represents a fundamental procedural change from traditional approaches to academic governance, and this change has given rise to a variety of legitimate concerns about the possible substantive impact of collective bargaining on academic institutions However, this potential for dramatic change has been minimized by a number of countervailing forces including the constitutional and statutory autonomy of many institutions, the essentially defensive or conservative character of most faculty unions, and the cooperative attitudes of both faculty and administration on many campuses. Thus research to date indicates that the overall effect of collective bargaining has not been as significant as initially expected, and if these tendencies persist, any future erosion of academic values as a result of collective bargaining will probably be very slight and very gradual.

- Collective bargaining seems to be a process to which the parties need time to adjust. In a number of areas including salary increases and shifts in managerial authority, the evidence indicates that gains for the faculty may be substantial when collective bargaining is first instituted but tend to decrease over the years. This is probably due to increased administrative familiarity with the collective bargaining process. Likewise, when a union has become established and feels more secure, it will generally take stronger steps to eliminate frivolous grievances and may even be willing to enter into informal negotiations with the administration to avoid the expense and difficulty of pursuing a formal grievance to its conclusion. This result means that the effects of collective bargaining will tend to be minimized over time.

- Although a number of factors can influence the impact of collective bargaining on institutions, it is clear that the attitudes of the parties make a significant difference. There is evidence that when administrators take a constructive attitude toward collective bargaining, unions respond in kind and that the

parties may often be able to safeguard traditional arrangements from which they have both benefited. Of course, the very existence of a union at a particular institution may imply that the union and the administration do not see the world from the same point of view. However, even where the union and administration disagree over salaries and working conditions, it may be both beneficial and possible for them to agree to the extent necessary to ensure the continued survival of the positive characteristics of academic institutions.

In addition to these conclusions, several observations seem relevant to an understanding of the impact of collective bargaining in California higher education:

- A healthy appreciation for the considerable variation in circumstances under which collective bargaining is conducted is critical to an accurate understanding of its impact. The enabling statutes, the interpretation of these statutes by the courts and administrative agencies, the political and economic conditions of the state, the structure and traditions of the institution, and the attitudes of the participants can all shape the outcome of the collective bargaining process. Thus findings based on the impact of collective bargaining among a broad range of institutions throughout the country, such as those reviewed in this report, should be used with caution in predicting the results of bargaining at any particular institution.

- Collective bargaining has proven to be an amazingly adaptable technique for managing labor relations. Originally developed for the industrial sector, it has been extended to artists, musicians, school teachers, other governmental employees, and even college and university faculty Given the tremendous complexities involved in adapting collective bargaining for the faculty of educational institutions, it seems noteworthy that the process works as well as it does.

- Although they have yet to stand the test of time, California's Educational Employment Relations Act and Higher Education Employer-Employee Relations Act appear to be well-designed statutes which are likely to do a creditable job of adapting collective bargaining to the needs of postsecondary education in California Both of these statutes, and most particularly the HEERA, were thoughtfully drafted with attention given to the experience of other states with collective bargaining in postsecondary education. The inclusion of student participation and the unique provisions for local and systemwide bargaining at the University of California are specific examples of this conscious effort to overcome problems which have arisen in other states. If the research reviewed in this study can be relied upon as a guide,

it would appear that many of the adaptations are likely to be successful and that EERA and HEERA will prove to be helpful in making collective bargaining a workable process for handling labor relations in California postsecondary education

In summary, collective bargaining is unlikely to bring revolutionary change to California postsecondary education. Nevertheless, it probably will intensify existing pressures for change and alter to some degree the governance relationships within institutions as well as between institutions and the State. While these changes are likely to be gradual rather than sudden or traumatic, their cumulative effect may be significant, and thus the development of collective bargaining in California public postsecondary education should be monitored closely in the next few years.

APPENDIX A

KEY PROVISIONS OF LAWS COVERING CALIFORNIA PUBLIC EMPLOYEE RELATIONS

This material in this appendix was assembled by Ronald Blubaugh, Administrative Law Judge, Public Employment Relations Board.

	State Employer-Employee Relations Act (Dills)	Meyers-Milias-Brown Act
Coverage:	Any civil service employee of the state and the teaching staff of schools under the jurisdiction of the Department of Education or the Superintendent of Public Instruction, except: 1) managerial employees; 2) confidential employees; 3) employees of the Legislative Counsel Bureau; 4) employees of the Public Employment Relations Board; 5) non-clerical employees of the State Personnel Board; and 6) conciliators employed by the State Conciliation Service. (Section 3513)	Any person employed by any local public agency, including special districts, except those persons elected or appointed to office by the Governor. (Section 3501)
Negotiating Obligation:	Meet and confer in good faith. (Section 3517)	Meet and confer in good faith. (Section 3505)
Scope of Representation:	Limited to wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. (Section 3516)	All matters relating to employment conditions and employer-employee relations, including, but not limited to wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order (Section 3504)

Educational Employment Relations Act (Rodda)	Higher Education Employer-Employee Relations (Berman)
Classified and certificated employees of public school districts, from grades K to 14, except persons elected or appointed to office by the Governor, management and confidential employees. (Section 3540.1)	Any employee of the University of California, The Hastings College of Law, and the California State University and Colleges, except managerial and confidential employees. Student employees may be covered. (Section 3562)
Meet and negotiate in good faith. (Section 3540.1)	Meet and confer in good faith. (Section 3562)
Limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits, leave, transfer and reassignment policies, safety conditions, class size, employee evaluation procedures, organizational security, grievance procedures, and layoff of probationary certificated employees pursuant to Section 44959.5 of the Education Code. Consultation is permitted on other matters. (Section 3543.2)	Limited to wages, hours of employment, and other terms and conditions of employment, except the scope of representation shall not include: 1) consideration of the merit, necessity, or organization of any service, activity, or program established by law or resolution; 2) amount of fees; 3) admission requirements for students and other matters related to degrees, curricula and research programs; and 4) appointments, promotions, evaluations and tenure. (If the academic senate for UC or the trustees for CSUC determine any matters to be withdrawn from the responsibility of the academic senates, the matter will be within the scope of representation.) (Section 3562)

	State Employer-Employee Relations Act (Dills)	Meyers-Milias-Brown Act
Standards for Unit Determination:	1) Internal and occupational community of interest among the employees. 2) Effective dealings. 3) Efficient operations. 4) Number of employees and classifications in a proposed unit. 5) Impact on the meet and confer relationship created by fragmentation of employees and any proliferation of units. 6) Appropriate group of skilled craft employees right to have separate unit. Skilled craft employees include, but are not limited to, carpenters, plumbers, electricians, painters, and operating engineers. 7) Rebuttable presumption that professional employees and non-professional employees shall not be included in same unit. The term "professional employee" is defined in Section 3521.5. 8) Board may designate positions or classes of positions which have duties primarily of the enforcement of state laws. Employees so designated have right to be in unit composed solely of such employees. (Section 3521)	1) No standards set forth in law except: a) Professional employees have right to separate representation. b) Law enforcement employees have right to separate representation. c) Right to designate management and confidential employees from representing other employees. 2) Standards permitted by local option. 3) Representation unit disputes may be referred to the State Conciliation Service for resolution. (Sections 3507 and 3508)

Educational Employment Relations Act (Rodda)	Higher Education Employer-Employee Relations (Berman)
1) Community of interest between and among the employees. a) Extent to which such employees belong to the same employee organization. b) Effect of the size of the unit on the efficient operations of the school district. 2) In all cases: a) All classroom teachers in one unit. b) Management and confidential employees excluded. c) Unit of supervisors must include all supervisors of the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise. d) Classified and certified employees shall not be included in the same negotiating unit. (Section 3545)	1) Internal and occupational community of interest among the employees. 2) Effective dealings. 3) Efficient operations. 4) Number of employees and classifications in a proposed unit. 5) Impact on the meet and confer relationship created by fragmentation of employees and any proliferation of units. 6) Rebuttable presumption that professional employees and non professional employees shall not be included in same unit. The term "professional employee" is defined in Section 3562. 7) Rebuttable presumption that all employees within an occupational group or groups shall be included in the same representation unit. (Systemwide units rather than individual campus units.) 8) Appropriate group of skilled craft employees right to have separate unit. Skilled craft employees include, but not limited to, carpenters, plumbers, electricians, painters, and operating engineers. 9) The only appropriate units for members of the UC academic senate shall be either a single statewide unit of all eligible members of the senate, or divisional units of all eligible members of a division of the senate. 10) If 35% of the UC academic senate are represented by an exclusive representative, PERB would entertain a petition to conduct an election to determine if members of the entire body desire to be represented by an exclusive agent in a single unit. 11) Peace officers are not to be included in unit with other employees. (Section 3579)

	State Employer-Employee Relations Act (Dills)	Meyers-Milias-Brown Act
Limitations on Management, Supervisors, and Confidential Personnel:	Management and confidential not covered. Supervisors have meet and confer rights only with restrictions from participating in representational matters of rank-and-file employees. (Sections 3512 and 3522)	All are covered. Restrictions on management and confidential employees from representing other employees on matters within the scope of representation. (Section 3501 and 3507.5)
Recognition:	Exclusive. (Section 3520.5)	Recognized and/or exclusive. (Section 3507)
Enforcement Board:	Public Employment Relations Board. (Section 3512)	None, except employee relations commissions are permitted by local option. (Section 3507)
Unfair Practices:	Yes (enforced by PERB). Prohibits discrimination, interference, restraint, coercion against employees in the exercise of their rights; domination or interference with the formation or administration of an employee organization; refusal of party to meet and confer in good faith; and refusal to participate in good faith in mediation procedure. (Section 3519)	None, except prohibitions against unfair practice are permitted by local option. (Section 3507)
Organizational Security:	Dues check off and maintenance of membership negotiable. (Section 3515)	Dues check off and maintenance of membership negotiable. (Section 3502)
Impasse Procedures:	Parties may agree to mediation and costs are divided. Either party may request PERB to appoint mediator and if PERB	Mediation specifically permitted with cost sharing. Parties may also agree to fact-finding. (Section 3505.2)

Educational Employment Relations Act (Rodda)	Higher Education Employer-Employee Relations (Berman)
Management and confidential not covered. Supervisors not to be included in same unit or represented by same employee organization as rank-and-file employees. (Sections 3540.1 and 3545)	Management and confidential not covered Supervisors have meet and confer rights only, with restrictions from participating in representational matters of rank-and-file employees. (Sections 3562 and 3580)
Exclusive. (Section 3544)	Exclusive. (Section 3573)
Public Employment Relations Board. (Section 3540)	Public Employment Relations Board. (Section 3563)
Yes (enforced by PERB). Prohibits discrimination, interference, restraint, coercion against employees in the exercise of their rights; domination or interference with the formation or administration of an employee organization; refusal or failing to meet and negotiate in good faith; and refusal to participate in good faith in the impasse procedure. (Sections 3543 and 3543.6)	Yes (enforced by PERB). Prohibits discrimination, interference, restraint, coercion against employees in the exercise of their rights; domination or interference with the formation or administration of an employee organization; refusal of a party to meet and confer; refusal to participate in good faith in the impasse procedure; requiring employees covered by MOU to pay initiation fees in an amount which PERB finds excessive or discriminatory; and under an exclusive representative or pending representation election, to consult with any academic, professional or staff advisory group on any matter within the scope of representation. (Section 3571)
Maintenance of membership and agency shop negotiable. (Section 3546)	Dues check off and maintenance of membership negotiable. (Sections 3582 - 3580)
1) Either party may declare an impasse and request PERB to appoint a mediator.	1) Either party may declare an impasse and request PERB to appoint a mediator.

	State Employer-Employee Relations Act (Dills)	Meyers-Milias-Brown Act
Impasse Procedures (continued);	does, costs are paid by PERB. Parties may also voluntarily agree to fact-finding. (Section 3518)	
Public Disclosure:	Yes, all initial proposals of both parties shall be presented at a public meeting. Negotiations cannot commence, except in cases of emergency, until at least seven consecutive days after public meeting. (Section 3523)	Not required.

Educational Employment Relations Act (Rodda)	Higher Education Employer-Employee Relations (Berman)
2) If PERB determines an impasse exists, a mediator is appointed within 5 working days after request.	2) If PERB determines an impasse exists, a mediator is appointed within 5 working days after request.
3) If no settlement within 15 days after mediator appointed, the mediator may declare that fact-finding is appropriate.	3) If no settlement within 15 days after mediator appointed, the mediator may declare that fact-finding is appropriate.
4) Either party may, by written notification to the other, request fact-finding.	4) Either party may, by written notification to the other, request fact-finding.
5) Within 5 days after receipt of written request, each party shall select a person to serve as its member of the fact-finding panel.	5) Within 5 days after receipt of written request, each party shall select a person to serve as its member of the fact-finding panel.
6) Within 5 days of such selection, the PERB shall select a chairman of the fact-finding panel.	6) Within 5 days of such selection, the PERB shall select a chairman of the fact-finding panel.
7) Within 30 days, if no settlement, panel makes recommendations.	7) Within 30 days, if no settlement, panel makes recommendations.
8) Employer makes recommendations public within 10 days.	8) Panel makes recommendations public after 10 days.
Costs	**Costs**
1) If mediator appointed by PERB, the PERB pays for mediation.	1) If mediator appointed by PERB, the PERB pays for mediation.
2) If the parties agree to their own mediation procedure, the costs shall be shared equally by the parties.	2) If the parties agree to their own mediation procedure, the costs shall be shared equally by the parties.
3) PERB pays the costs of the chairman of the fact-finding panel. (Section 3548)	3) PERB pays the costs of the chairman of the fact-finding panel. (Sections 3590-3594)
Yes, all initial proposals of both parties shall be presented at a public meeting. Negotiations cannot commence until a reasonable time has elapsed after submission of the proposals at a public meeting. New subjects to bargaining after presentation of contract proposals shall be made public within 24 hours. (Section 3547)	Yes, all initial proposals of both parties shall be presented at a public meeting. Negotiations cannot commence until a reasonable time has elapsed after submission of the proposals at a public meeting. New subjects to bargaining after presentation of contract proposals shall be made public within 24 hours. (Section 3595)

	State Employer-Employee Relations Act (Dills)	Meyers-Milias-Brown Act
Right to Strike:	No, Section 923 of the Labor Code not applicable. (Section 3523.5)	No, Section 923 of the Labor Code not applicable. (Section 3509).
Effective Date:	January 1, 1978 for EERB to become PERB and other organizational changes. July 1, 1978 for full implementation.	January 1, 1969.

Prepared: October 23, 1978

Educational Employment Relations Act (Rodda)	Higher Education Employer-Employee Relations (Berman)
No, Section 923 of the Labor Code not applicable. (Section 3549)	Silent. No disclaimer of Section 923 of the Labor Code.
January 1, 1976 for Governor to appoint members of Educational Employment Relations Board. April 1, 1976 for receipt of petitions for recognition, determination of negotiating units, and election of exclusive bargaining agents. July 1, 1976 for full implementation.	July 1, 1979.

APPENDIX B

FACULTY CONTRACTS AND BARGAINING AGENTS IN CALIFORNIA PUBLIC AND PRIVATE INSTITUTIONS

Institution	Bargaining Agent	Unit Size	Year Current Agent Elected	Year Initial Contract Signed	2/4 Year	No. of Campuses	Contract Expiration Date
Barstow Community College	NEA	65	1979	1979	2	1	6/30/82
Butte College	NEA	125	1978	7/1/78	2	1	
Chabot College	NEA	240 ft 260 pt	1978	2/20/79	2	1	6/30/84
Chaffee Community College	NEA	482	1980	——	2	1	
Citrus College	NEA	130	1977	7/1/77	2	1	6/30/82
*Claremont Colleges	OPEIU	Librarians		1972	4	6	No contract in effect
Coast Community College • Part-time	AFT NEA	662 1,433	1979 1979	5/7/80 7/1/80	2 2		6/30/82 6/30/83
College of the Canyons	NEA	45 ft	1977	5/12/78	2	1	6/30/82
College of the Redwoods	Ind.	120 ft 450 pt	1976	1976	2	1[4]	6/30/82
College of the Sequoias	NEA	149	1976	3/21/77	2	1	6/30/84
Compton Community College	AFT	80 ft 150 pt	1978	7/1/79	2	1	6/30/82
Contra Costa Community College District	Ind.	500 f/pt	1977	7/1/77	2	3	6/30/83
Cypress College	NEA	200 ft	1979	4/29/81	2	1	6/30/83
El Camino Community College	AFT	770 f/pt	1977	9/20/77	2	1	6/30/84
Foothill-DeAnza Community College District	Ind.	1,200 f/pt	1977	11/23/77	2	2	6/30/83
Fullerton College	NEA	350	1980	4/29/81	2	1	6/30/83
Gavilan Community College	NEA	62 ft	1976	1976	2	1	6/30/82
Glendale Community College	AFT	415	1979	1/22/80	2	1	6/30/82
Grossmost College	NEA	480 f/pt	1977	10/24/78	2	2	6/30/84
Kern Community College District	NEA	330	1977	1977	2	3	6/30/82
Long Beach City College	NEA	312 ft	1979	1979	2	2	6/30/82
Los Angeles Community College System	AFT	4,800 f/pt	1976	1/16/78	2	9	6/30/83

Institution	Bargaining Agent	Unit Size	Year Current Agent Elected	Year Initial Contract Signed	2/4 Year	No. of Campuses	Contract Expiration Date
Los Rios Community College System	AFT	1,297 ft	1977	1977	2	4	6/30/81**
Marin Community College	AFT	600	1978	3/11/80	2	2	6/30/81
Mendocino College	Ind.	150	1981	1982	2	1+	6/30/85
Merced College	NEA	130	1976	1977	2	1	6/30/82
Monterey Peninsula Community College	NEA	420	1978	5/16/80	2	1	6/30/82**
Mount San Antonio College	NEA	744 ft	1976	3/15/78	2	1	6/30/82
Mount San Jacinto College	NEA	40 ft	1977	6/14/77	2	1	6/30/82
Napa College	NEA	96 ft 179 pt	1977	----	2	1	6/30/82
North Orange County Community College	NEA	550	1979	4/29/81	2	2	6/30/83**
Palo Verde Community College	NEA (AFT 1976)	18	1980	8/76	2	1	9/15/82
Pasadena City College	NEA	346	1979	7/1/79	2	1	6/30/83
Peralta Community College District	AFT	500 ft 400 pt	1979	1980	2	5	
Rancho Santiago Community College District	Ind.	236			2	16	6/30/82
• Continuing Education Faculty	NEA	51			2	1	6/30/82
Rio Hondo Community College	NEA	507	1979	6/80	2	1	6/30/83
Riverside Community College	NEA	600	1978	10/1/80	2	1	9/30/82
Saddleback Comm. College • Part-time	NEA Ind.	163 500	1976	7/1/76	2 2	1 1	6/30/83
San Diego Comm. Colleges • Adult Education	CTA/NEA AFT	462 120	1977 1977	7/1/77 7/1/77	2 2	3 11	6/30/84 6/30/84
San Francisco Community College	AFT	1,620 f/pt	1978	12/79	2	9	6/30/84
San Joaquin Delta College	NEA	580 f/pt	1977	12/14/77	2	1	6/30/83
San Jose Community College District	NEA	270 ft 690 pt	1977	1/17/78	2	2	6/30/82
San Mateo Community College	NEA	1,100	1977	7/19/78	2	3	6/30/82
Santa Barbara City College	NEA	180	1976	1976	2	2	6/17/82
Santa Monica Community College	Ind.	200 ft 400 pt	1978	9/14/79	2	1	6/30/82
Shasta College	NEA	156 ft 75 pt	1976	1976	2	17	6/30/84

Institution	Bargaining Agent	Unit Size	Year Current Agent Elected	Year Initial Contract Signed	2/4 Year	No. of Campuses	Contract Expiration Date
Sierra Joint Community College District	NEA	135 f/pt	1977	5/9/78	2	1	6/30/82
Solano Community College	NEA	136 ft 250 pt	1977	1977	2	1	6/30/82
Southwestern College (Sweetwater Community College District)	NEA	500 f/pt	1977	2/1/79	2	1	6/30/84
State Canter Community College District	AFT	333	1977	8/29/77	2	2[8]	6/30/84
Taft College	NEA	30	1976	5/77	2	1	6/30/84
University of California Santa Cruz	AAUP	437	1981	——	4	1	
*University of San Francisco	Ind.	241 ft	1975	7/1/76	4	1	6/30/86
*University of San Francisco Law School	Ind.	25	1973	1974	4	1	1982/only Salaries
Ventura County Community College District	AFT	385 ft 900 pt	1977	3/7/78	2	3	6/30/82
Victor Valley College	NEA	63	1976		2	1	6/30/84
West Hills College	NEA	50	1977		2	1	6/30/82
Yosemite Community College District	NEA	515	1976	1/16/78	2	2	6/30/83
Yuba College	NEA	155			2		6/30/83

* Private

Source: Douglas and Kramer, 1982, pp. 2-6; updated by the Commission.

REFERENCES

Alleyne, Reginald. "Instituting Collective Bargaining at California's Universities and Colleges: The Outlines of HEERA." The Hastings Law Journal, 31:3 (January 1980) 563-615.

Baldridge, J. Victor; Kemerer, Frank R.; and Associates. Assessing the Impact of Faculty Collective Bargaining. AAHE-ERIC/Higher Education Research Report No. 8, 1981. Washington, D.C.: American Association for Higher Education, 1981.

Begin, James P. "State Institutional Relations Under Collective Bargaining in New Jersey," in Kenneth P Mortimer, ed., Faculty Bargaining, State Government, and Campus Autonomy: The Experience in Eight States. Denver: Education Commission of the States, 1976.

Birnbaum, Robert. "Compensation and Academic Bargaining: New Findings and New Directions," in Aaron Levenstein, ed., Collective Bargaining and the Future of Higher Education. Proceedings, Fifth Annual Conference, April 1977. New York: National Center for the Study of Collective Bargaining in Higher Education, Baruch College, City University of New York, 1977.

Brouder, Kathleen "Students and Academic Collective Bargaining," in Thomas Mannix, ed., Collective Bargaining in Higher Education: Proceedings, Fourth Annual Conference, April 1976. New York: National Center for the Study of Collective Bargaining in Higher Education, Baruch College, City University of New York, 1977.

Brown, William W., and Stone, Courtenay C "Faculty Compensation Under Unionization: Current Research Methods and Findings," in Aaron Levenstein, ed., Collective Bargaining and the Future of Higher Education: Proceedings, Fifth Annual Conference, April 1977. New York: National Center for the Study of Collective Bargaining in Higher Education, Baruch College, City University of New York, 1977.

Bucklew, Neil S. "Controlling the Costs of Bargaining," in George W. Angell, Edward P. Kelley, Jr., and Associates Handbook of Faculty Bargaining. San Francisco: Jossey-Bass, 1977.

California Postsecondary Education Commission. "The Impact of Collective Bargaining on Postsecondary Education." Agenda Item 4, June 9, 1975

Close, Catherine. "Collective Bargaining in the California Community Colleges." Sacramento: California Community Colleges, Chancellor's Office, 1979.

Douglas, Joel M. "The Yeshiva Case: One Year Later," in Joel M. Douglas, ed., The Legal and Economic Status of Collective Bargaining in Higher Education: Proceedings, Ninth Annual Conference, April 1981. New York: National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York, 1981.

Douglas, Joel M , and Kramer, Steven. Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education, Volume 8, January 1982. New York: The National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York, 1982.

Duryea, E. D , and Fisk, Robert S. "Collective Bargaining, The State University, and State Government in New York," in Kenneth P. Mortimer, ed., Faculty Bargaining, State Government, and Campus Autonomy: The Experience in Eight States. Denver: Education Commission of the States, 1976.

Education Commission of the States. Cuebook II: State Education Collective Bargaining Laws, prepared by Doris Ross and Patricia Flakus-Mosqueda. Denver: The Commission, 1980.

Feller, David E., and Finkin, Matthew W. "Legislative Issues in Faculty Collective Bargaining," in Carnegie Council on Policy Studies in Higher Education, Faculty Bargaining in Higher Education: A Report and Two Essays. San Francisco: Jossey-Bass,
1977.

Ferguson, Tracy H.; Bergan, William L.; and Braff, Jeffrey L. "Labor Board Jurisdictional and Unit Determinations," in Judith P. Vladeck and Stephen C. Vladeck, eds., Collective Bargaining in Higher Education: The Developing Law. New York: Practising Law Institute, 1975.

Garbarino, Joseph W. "State Experience in Collective Bargaining," in Carnegie Council on Policy Studies in Higher Education, Faculty Bargaining in Higher Education A Report and Two Essays. San Francisco. Jossey-Bass, 1977.

Garbarino, Joseph W., and Aussieker, Bill. Faculty Bargaining: Change and Conflict. New York McGraw-Hill, 1975.

Hjort, Barry L. "Involving Students in Bargaining," in George W. Angell, Edward P. Kelley, Jr., and Associates, eds., Handbook of Faculty Bargaining. San Francisco: Jossey-Bass, 1977.

Johnson, Mark D., and Gershenfeld, Walter J. "State Institutional Relations Under Faculty Collective Bargaining in Pennsylvania," in Kenneth P. Mortimer, ed., Faculty Bargaining, State Government, and Campus Autonomy: The Experience in Eight States. Denver: Education Commission of the States, 1976.

Kerchner, Charles T. "The 'Unionization' of College Presidents: Their Response to Faculty Unions." Educational Administration Quarterly, 13·3 (Fall 1977) 87-104.

Kleingartner, Archie. "Unions and Academics," in James L. Stern and Barbara B. Dennis, eds., Trade Unionism in the United States: A Symposium in Honor of Jack Barbash. Madison: Industrial Relations Research Institute, University of Wisconsin-Madison, 1981.

Kuechle, David. "Yeshiva Shock Waves," in Joel M. Douglas, ed., The Legal and Economic Status of Collective Bargaining in Higher Education: Proceedings, Ninth Annual Conference, April 1981. New York: National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York, 1981.

Ladd, Everett Carll, Jr., and Lipset, Seymour Martin. Professors, Unions, and American Higher Education Berkeley: The Carnegie Commission on Higher Education, 1973.

Lau, Kenneth K., and Mortimer, Kenneth P. "Faculty Bargaining at the University of Hawaii," in Kenneth P. Mortimer, ed., Faculty Bargaining, State Government, and Campus Autonomy: The Experience in Eight States. Denver· The Education Commission of the States, 1976.

Lee, Barbara A. Collective Bargaining in Four-Year Colleges. Washington, D.C.: American Association for Higher Education, 1978.

Leslie, David W. Conflict and Collective Bargaining. Washington, D C.: American Association for Higher Education, 1975.

Lewin, David. "The Politics of Collective Bargaining Legislation for Public Higher Education in California," in Industrial Relations Research Association Series: Proceedings of the 32nd Annual Meeting. Atlanta: Industrial Relations Research Association, 1979.

Lienemann, William H., and Bullis, Bruce. Collective Bargaining in Higher Education Systems: A Study of Four States. Washington, D.C.: American Association of State Colleges and Universities, 1980.

Magarrell, Jack. "Average Faculty Salaries Found Highest at Institutions With AAUP-AFT Unions." The Chronicle of Higher Education, 24:19 (July 7, 1982) 1, 10.

Mortimer, Kenneth P., ed. Faculty Bargaining, State Government, and Campus Autonomy: The Experience in Eight States. Denver. Education Commission of the States, 1976.

Naples, Caesar J., and Bress, Joseph M. "Collective Bargaining: Its Scope," in Judith P. Vladeck and Stephen C. Vladeck, eds., Collective Bargaining in Higher Education: The Developing Law, New York: Practising Law Institute, 1975.

Nelson, Susan C. "The Equity of Public Subsidies For Higher Education: Some Thoughts on the Literature. Papers in Education Finance No. 5. Washington, D.C.: The Brookings Institution, February 1978.

Schwartz, Stanley J. "Governance: Another View," Labor Law Journal, October 1980, p. 645.

Shark, Alan. "Do Students Have Any Place in Collective Bargaining?" in Thomas M. Mannix, ed , Collective Bargaining in Higher Education: Proceedings, Second Annual Conference, April 1974. New York: National Center for the Study of Collective Bargaining in Higher Education, Baruch College, City University of New York, 1974.

Steiner, Barry N. "The Impact of Collective Bargaining Upon Those Who Govern Higher Education: I," in Aaron Levenstein, ed., The Uniqueness of Collective Bargaining in Higher Education: Proceedings, Sixth Annual Conference, April 1978. New York: National Center for the Study of Collective Bargaining in Higher Education, Baruch College, City University of New York, 1978.

Wakshull, Samuel J. "The Impact of Collective Bargaining Upon Those Who Govern Higher Education: II," in Aaron Levenstein, ed., The Uniqueness of Collective Bargaining in Higher Education: Proceedings, Sixth Annual Conference, April 1978. New York: National Center for the Study of Collective Bargaining in Higher Education, Baruch College, City University of New York, 1978.

Weinberg, William M. "Patterns of State-Institutional Relations Under Collective Bargaining," in Kenneth P. Mortimer, ed., Faculty Bargaining, State Government, and Campus Autonomy: The Experience in Eight States. Denver· Education Commission of the States, 1976.

Wellman, Jane. "Collective Bargaining and Affirmative Action: Issues and Options." Duplicated Memorandum, Sacramento, 1980.

Wollett, Donald H. "Self Governance and Collective Bargaining for Higher Education Faculty: Can the Two Systems Co-Exist?", in Judith P. Vladeck and Stephen C. Vladeck, eds., Collective Bargaining in Higher Education: The Developing Law. New York: Practising Law Institute, 1975.

CALIFORNIA POSTSECONDARY EDUCATION COMMISSION

THE California Postsecondary Education Commission is a citizen board established in 1974 by the Legislature and Governor to coordinate the efforts of California's colleges and universities and to provide independent, non-partisan policy analysis and recommendations to the Governor and Legislature

Members of the Commission

The Commission consists of 17 members Nine represent the general public, with three each appointed for six-year terms by the Governor, the Senate Rules Committee, and the Speaker of the Assembly Six others represent the major segments of postsecondary education in California Two student members are appointed by the Governor

As of January 1994, the Commissioners representing the general public are

Henry Der, San Francisco, *Chair*
C Thomas Dean, Long Beach, *Vice Chair*
Elaine Alquist, Santa Clara
Mim Andelson, Los Angeles
Helen Z Hansen, Long Beach
Guillermo Rodriguez, Jr , San Francisco
Melinda G Wilson, Torrance
Linda J Wong, Los Angeles
Ellen Wright, San Jose

Representatives of the segments are.

Alice J Gonzales, Rocklin, appointed by the Regents of the University of California,

Yvonne W Larsen, San Diego, appointed by the California State Board of Education,

Alice Petrossian, Glendale, appointed by the Board of Governors of the California Community Colleges,

Ted J Saenger, San Francisco, appointed by the Trustees of the California State University,

Kyhl Smeby, Pasadena, appointed by the Governor to represent California's independent colleges and universities, and

Frank R. Martinez, San Luis Obispo, alternate appointed by the Council for Private Postsecondary and Vocational Education

The student representatives are

Christopher A Lowe, Placentia
Beverly A Sandeen, Costa Mesa

Functions of the Commission

The Commission is charged by the Legislature and Governor to "assure the effective utilization of public postsecondary education resources, thereby eliminating waste and unnecessary duplication, and to promote diversity, innovation, and responsiveness to student and societal needs "

To this end, the Commission conducts independent reviews of matters affecting the 2,600 institutions of postsecondary education in California, including community colleges, four-year colleges, universities, and professional and occupational schools

As an advisory body to the Legislature and Governor, the Commission does not govern or administer any institutions, nor does it approve, authorize, or accredit any of them Instead, it performs its specific duties of planning, evaluation, and coordination by cooperating with other State agencies and non-governmental groups that perform those other governing, administrative, and assessment functions

Operation of the Commission

The Commission holds regular meetings throughout the year at which it debates and takes action on staff studies and takes positions on proposed legislation affecting education beyond the high school in California By law, its meetings are open to the public Requests to speak at a meeting may be made by writing the Commission in advance or by submitting a request before the start of the meeting

The Commission's day-to-day work is carried out by its staff in Sacramento, under the guidance of its executive director, Warren Halsey Fox, Ph.D , who is appointed by the Commission

Further information about the Commission and its publications may be obtained from the Commission offices at 1303 J Street, Suite 500, Sacramento, California 98514-2938, telephone (916) 445-7933